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AMERICAN GOVERNMENT TO-DAY

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THE GOVERNMENT OF THE UNITED
STATES.

THE GOVERNMENTS OF EUROPE.

THE GOVERNMENT OF AMERICAN
CITIES.

PERSONALITY IN POLITICS.

MAKERS OF THE UNWRITTEN CON-
STITUTION.

THE INVISIBLE GOVERNMENT.

CURRENT PROBLEMS IN CITIZEN-
SHIP.

AMERICAN GOVERNMENT TO-DAY

BY

WILLIAM BENNETT MUNRO

New York

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1934

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PREFACE

The purpose of this book is to explain the organization and functions of American government in such a way that those who study it may be inspired to a better understanding of their duties as citizens. The author has endeavored to picture the government of the American people as a going concern, with activities which reach deeply into the social and economic life of the nation. To that end a good deal of attention is given to what government does, what problems it is encountering, and by what methods it is attempting to achieve those ends for which it was established.

Each chapter of the book is preceded by some general questions which every intelligent citizen should be able to answer. They are designed to stimulate interest by showing that the forms, processes, and problems of government are by no means so simple as people commonly assume them to be. In the text of the book, moreover, no attempt has been made to endow the subject with an artificial simplicity by the easy device of avoiding difficult questions. To gain an intelligent understanding of American government in all its phases involves much reading, thought, concentration, and work. There is no royal road to effective citizenship. On the other hand the author has done his best to clarify the complications, to arrange the material in orderly sequence, and to write the kind of English that does not require undue effort to read.

Attention may properly be called to the supplementary

matter at the end of each chapter, with references, questions, subjects for essays, and topics for debate. These, it is hoped, will prove a useful feature of the book.

Acknowledgment should be made of the author's obligation to Miss Thais Plaisted, of the Lincoln High School, Los Angeles, for her helpfulness in giving the material a thorough tryout, and to Mrs. Ethel H. Rogers of Pasadena for expert assistance in preparing the manuscript for publication.

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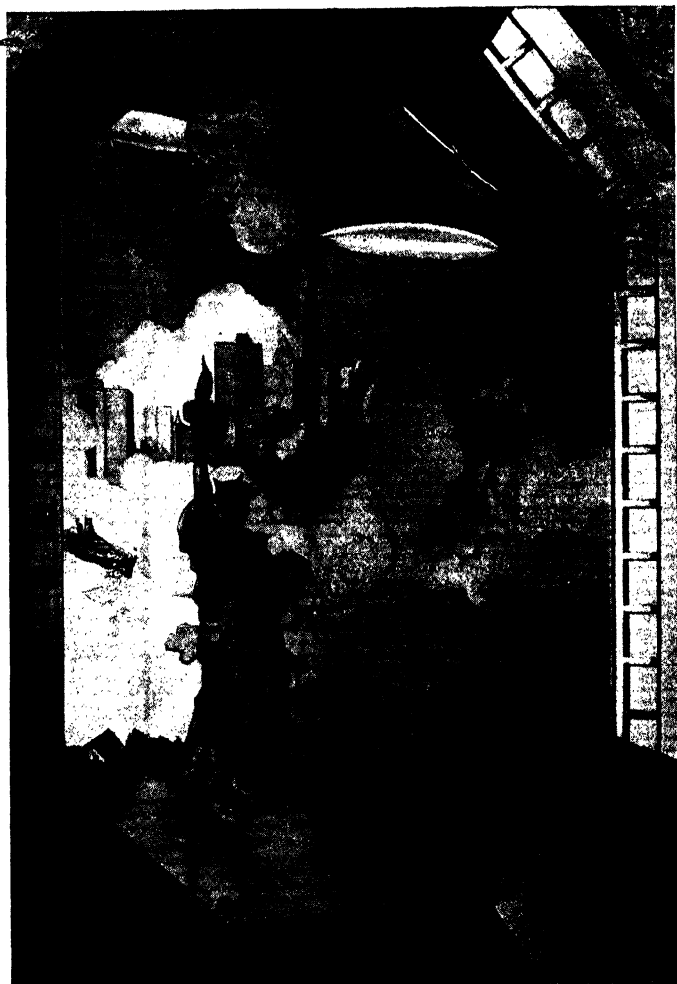
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Courtesy of Hotel New Yorker

LIBERTY ENLIGHTENING THE WORLD

From Louis Jambor's mural painting of the Statue of Liberty

AMERICAN GOVERNMENT

CHAPTER I

WHY WE HAVE GOVERNMENT

1. When the Pilgrims came to the shores of New England in 1620, one of the first things they did was to set up a government. They made an agreement or covenant among themselves whereby they established a "civil body politic." Is that the way in which a government has usually originated—by a definite agreement among the people?
2. If someone were to say that governments exist chiefly for the purpose of defending the country and keeping their own people from doing wrong to one another, would he be speaking correctly? If not, what other things of great importance are done by governments? How would they be done if there were no governments?
3. Thomas Jefferson once said that "a government is best when it governs least." Was that statement true in Jefferson's time? Is it true to-day? Can we say that a government ought to act toward its people just as a father does toward his children?
4. Do people obey their government because they are afraid of it? Or because they have formed the habit of obeying it? Or because they know that obedience is essential to the general welfare?

What is government? By government we mean the rulership of the people through various public officials and bodies. The word is derived from the Latin *gubernare*, meaning to rule. It originated in days when government was conducted by kings and lords for the benefit of a

uling class. But to-day government is the organization through which the will of the people is carried out. In free governments nowadays the people rule themselves. They elect representatives to make laws, and directly or indirectly they choose officials and judges to administer and enforce these laws. Together these lawmakers, administrative officials, and judges make up the government. In the United States there are many governments—one for the whole nation, one for each state, one for each county, city, town, and township. But in each case the government is simply an organization which serves the community.

Why do we obey it? We obey government because everyone has needs which cannot be satisfied except by coöperation. No individual can produce his own food and clothes, protect himself from robbery or from fire or from disease, build streets to drive upon, maintain schools, and so forth—all by his own efforts. No one, by his own unaided efforts, can make certain that his rights are protected, his children educated, and his property safeguarded. These things must be done by some central agency in which all the people join. To get the best results they must be willing to obey the government which they maintain for this purpose. No government could function if every individual insisted on doing as he pleased without regard for the interests of others. People obey government, therefore, because it is the only sensible thing to do when they desire safety, health, prosperity, and the conveniences of life. In time they acquire the habit of obedience and it becomes natural to them. Then they obey government without thinking about it.

Government is universal. Everybody on this earth

lives under a government of some sort. It may be a highly developed and complex government with legislative, executive, and judicial organs, like that of the United States, or it may be a very crude and simple government like that of a savage tribe in the heart of Africa with nothing but a single chieftain who makes the rules, enforces them, and hands out justice all by himself. People everywhere must be governed, and for the most part they are governed by their own consent. Government in some form is as essential to human life as air and food and water are. People give their consent because they have learned that government is not merely an agency of restraint but an organization for promoting the common welfare. Its aim is the good of all through the coöperation of all. It regulates and forbids some things in order that it may encourage and promote others.

Its origin. How did government originate? The old idea was that government had its origin in an agreement or social contract. In early times, it was believed, a group of uncivilized men came together and agreed that one man should be the leader and ruler of the rest in order that they might better defend themselves against their enemies. The rest, on their part, agreed to obey this leader or chief. Having thus organized themselves, they became more successful in warfare against their unorganized neighbors, and made better progress in peaceful pursuits as well. Soon other groups of people copied their example, and in time the leaders became kings. It all grew out of a spontaneous agreement.

The family as the starting point. This theory of a social compact has now been exploded. Governments did not originate through any intentional act of the people.

The earliest governments came into existence naturally and grew by gradual stages; so gradual, indeed, that people did not realize what they were doing. Governments were not formed at one stroke; they developed from simple beginnings, a little at a time. This simple beginning was the family, for the family organization is as old as the human race itself. The children were under the guardianship of their parents, and the rule of the father in his family is the oldest form of rulership. The family is the germ of all organized society.

Its gradual expansion. Has it ever occurred to you that the family is the only human organization that is established by nature? Every other organized group—the town, city, state and nation, the club, the school, the political party—they are all bound together by artificial ties of common interest or purpose. The family differs from them all in that it is based on blood relationship. We can *choose* our political party, or even our citizenship; but we are *born* into families. We have no choice in that matter. Father, mother, and children must hold together until the children are able to shift for themselves. It was particularly essential to do this in primitive society, for otherwise the children would have perished and the human race would have died out. Among the lower animals the offspring quickly become able to gain their own livelihood, usually in a few months, or at most in two or three years. Birds reach maturity in a few months. But among human beings the period of dependence upon parents is much longer; it is ten, twelve, fourteen years, or even more. This “prolongation of infancy” is what gave government its first start. Having to provide food and shelter for their families during many years, even the earliest savages

found it necessary to make rules for their children, to require obedience, to afford them protection, and to do many things which, when done on a large scale, we call *government*. Leadership on the one hand, and obedience on the other—these form the essence of government. Both came into existence naturally; they were not established by any conscious agreement or social compact.

Then the clan. But individual families, even in early times, did not live by themselves. When children grew up they produced families of their own. Then these various families, being related to one another, naturally held together. Run your mind's eye backward to four or five thousand years ago and imagine a group of primitive people, numbering perhaps a hundred in all, tending their sheep or cattle somewhere in the valleys of Mesopotamia. There would be grandfathers, sons, grandsons, brothers, sisters, aunts, nephews, cousins, and all sorts of relatives in this group. Together they formed a clan. Usually they did not live long in any one place but moved about, taking their cattle and sheep to new pastures when the old ones were exhausted. Of course it was desirable that everybody in the clan should get along in friendly fashion, each doing his own share of the daily work; which meant that there must be somebody to settle disputes. As a matter of custom, the oldest male member of the clan, commonly called the *patriarch*, assumed this function because he was the most experienced and had the greatest influence. The patriarch in this way became the head of the clan; the whole clan turned to him for counsel, and his word was law. Here was the second step in the evolution of government as we now have it.

And then the tribe. Then came the third step. In

the nature of things it often happened that two or more of these clans or groups of families lived not far apart. They wandered about, and in finding pasture for their flocks they sometimes came into contact with one another.¹ This contact was not always friendly; there were frequent disputes as to which clan had the right to possess some fertile valley or watershed. Consequently it often happened that one clan would try to drive another out and bitter fighting would result. In the course of such fighting one clan usually defeated the other and thereafter ruled it, or in some cases the two warring clans made peace and agreed to unite and share the land equally. In various ways, at any rate, a strong clan became enlarged until it included several hundred members, or even several thousand. Then it became known as a tribe, and roamed over a much larger amount of territory, carrying on war with other tribes, and hence needing a more powerful leader. This leader, or chief, was usually chosen by the whole tribe for his skill as a warrior, or for his wisdom in time of peace. He did not always rule the tribe in his own way, but often called together a council of the older tribesmen when difficult questions were to be decided. Sometimes the chief held a mass meeting of all the full-grown men of the tribe to settle the most vital matters; for example, whether the tribe should wage a war, or whether it should move its huts and tents to some other region. The Roman historian, Tacitus, when he visited the Teutonic tribes, found them at this stage in the development of a governmental organization.

Its migratory stage. Even yet, however, these early tribes did not settle permanently in any one place. They

¹Read in the Book of *Genesis*, for example, what sometimes happened in such cases. (Ch. xiii, 1-12.)

moved about, always looking for places where the land was fertile and where food could be most easily obtained. Primitive man had to earn his living by the sweat of his brow, and he tried to get the most food for the least sweat. He went where he could most easily make a living, and if others were already there, his tribe tried to drive them out. So the chief function of the leader was to protect his own tribesmen and to gain for them a mastery over others. For that reason his prowess in warfare rather than his sagacity in time of peace was the basis upon which the selection of the tribal chief was ordinarily made.

The tribes settle down. In time, however, the tribes ceased to wander. One after another they found good land and settled down. They began to bestow less attention upon the raising of cattle and more upon the cultivation of the fields. They built houses and villages; they divided the land into farms for each individual family, thus establishing private property and enabling the creation of wealth. With this development began the division of the people into social classes, some with more property than others. The rich and powerful became noblemen while the poor and shiftless dropped to the status of peasants, serfs, and laborers. The chief of the tribe now became a duke or a king, and those who had formerly constituted a roving band became the population of a small kingdom with an established ruler.

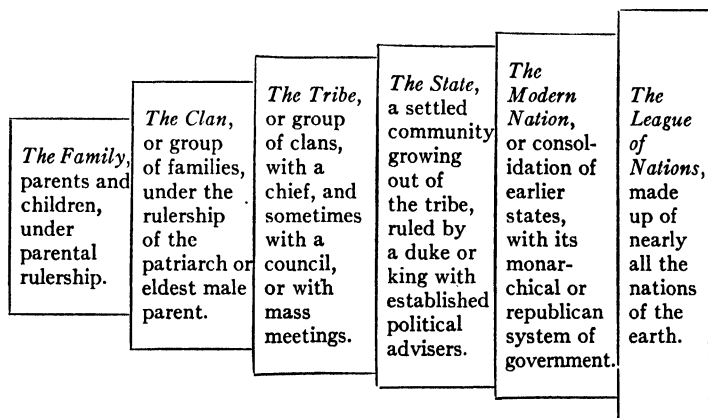
England as an illustration. The Anglo-Saxons, for example, had a tribal organization before they migrated to England. But after they conquered this island, they settled down into seven small kingdoms, known as the *heptarchy*, each with its own boundaries and its own ruler. In the course of time these various small states were united

into two larger ones and finally into a single nation, the English nation, with its king and its *witan* or council of noblemen, out of which eventually grew the English parliament. Finally, the English nation conquered Wales and united with Scotland and Ireland. Together they founded colonies in America; these colonies declared their independence, thus becoming independent states and later uniting into a nation. Finally, a League of Nations is created, although the United States is not a member of it. From the early family, through the clan, tribe, kingdom, and federated republic, the development has taken several thousand years; but it has been a natural growth keeping step with the progress of civilization. Of course the process has not always run smoothly and peacefully. Tribes and states have conquered and annexed one another; states have been broken up and divided; nations have been formed and reformed by treaties or unified by constitutions. It has been an irregular development and we are not yet at the end of it. Government will keep growing into new forms.

The general course of political evolution. The various steps in this development may be illustrated by the diagram on page 9.

American government is older than most people realize. Thus the government of the United States did not have its real origin in the agreement of the Pilgrims, or in the framing of the constitution at Philadelphia. Its beginnings go back several thousand years. Its growth is to be traced from the primitive Aryan family through the patriarchal clan, the Saxon tribes, the English kingdom, and the thirteen American colonies. Then came the establishment of the new state governments after the Revolution,

the forming of the Federal Union, and the gradual enlargement of the original thirteen states into forty-eight. It is a long story, but every citizen ought to be familiar with the main features of it. He ought to realize that the free government which we possess and enjoy to-day did not come as a free gift but as the result of a long struggle. Government by the people, freedom of the individual, peace and good-will among nations—these are priceless benefits whose value we ought to realize so that we may help pre-



serve them. Things that have been won through hard struggles may also be lost by lack of vigilance. The safeguard of liberty is a watchful citizenship.

The general functions of government. Why have people at all stages required a government, and why do they require it to-day? What necessary functions does a government perform? There are a great many such functions, but the more important ones can be grouped under five or six heads, some of which are:

(a) *Defence.* In the first place, people require a govern-

ment to provide for their own defence against foreign enemies. The desire for peace and protection is what first brought governments into existence. Countries ought to live alongside each other in friendship, but disputes are bound to arise between them from time to time, and when they do arise, a country without means of defence will find itself in a bad way. To provide for the common defence requires an army, a navy, and an air force, besides fortifications on the coast and along the border. It is the function of a government to make and maintain all these provisions for safety. Without a government it is hard to see how they could be maintained.

(b) *Law and order.* We also need a government to secure justice and order; to serve as the umpire in all disputes among individuals. When people live in daily contact with one another, they are sure to disagree concerning their individual rights and duties. Left to themselves, they would settle these differences by quarrels and fighting. The strongest individual would get what he wanted, right or wrong. Life would be unsafe and disagreeable under such conditions. But a government makes laws in the common interest; it gives each individual certain rights under these laws; it enforces the laws and protects the rights of all, including the right of everyone to be free from unjust interference by others. In a word, we need legislatures to make laws and courts to enforce them. Legislatures and courts go to make up a government.

(c) *The constructive work of government—health protection.* Let it not be imagined, however, that national defence and the maintenance of order are the only things which make a government necessary or desirable. The government performs many other functions which, if we

had no government, would not be performed at all or would be done very badly. Most of them are constructive functions; that is, they contribute to the health, happiness, prosperity, and progress of the country. The betterment of the public health is an example. Health is not a matter for individual attention alone. However careful the individual may be, he cannot hope to escape illness if conditions are bad all around him: for example, if the water supply is impure and if epidemics of disease are allowed to spread without any attempt to control them. The government makes and enforces health regulations for the advantage of all; its officers examine all immigrants to prevent diseased persons coming in from other countries; they inspect our food, milk, and water supplies; the government maintains hospitals for the care of the sick and provides for the disinfection of premises in which there has been contagious disease. In these and many other ways, a government protects and seeks to improve the health of the people.

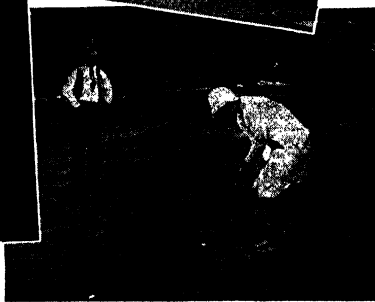
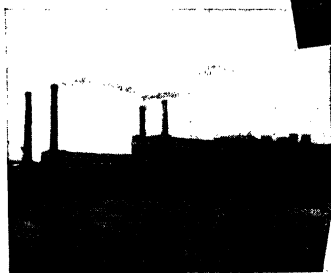
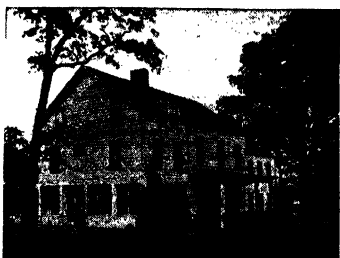
(d) *Education.* Education is another constructive function of government. In earlier days all the schools were private schools. They were conducted by a church, or by some charitable organization, or by individuals for profit. For the most part only the children of rich parents could get an education. The rest grew up without it, often without even knowing how to read and write. In time, however, people came to see that this was bad policy and they proceeded to change it. The government assumed the duty of providing free schools and when this had been done, it took the next logical step by requiring that all children must attend school regularly. So education has now become both free and compulsory. It could not be either

if we did not have a government to provide and maintain the schools.

(e) *Other useful functions.* One might go on at great length describing the things that a government does for its citizens—the care of the poor and the insane, the building of roads and bridges, the encouragement of agriculture and commerce, the protection of property against fire, regulating the hours of labor, making rules for traffic on the streets. One could make a list of a hundred such things and still leave some unmentioned. Imagine what chaos we should have if everybody were left to make his own laws and enforce them; if nobody felt bound to respect the rights of others; if there were no means of defence against invasion; if there were no organization to look after the public health, provide schools, care for the poor, and do all the other things that a government now does. The more civilized a country becomes, the greater is the need for government.

Then and now. How would people feel to-day if they were asked to do without paved roads and go back to a mud trail through the forest? What would they say if you were to suggest that police and fire protection are not needed, or that water should be carried from the town pump instead of being drawn from taps? What if there were no sewers and all wastes were dumped into the streets—as was the case in New York City once upon a time? Would we go back to the discomforts of the log school-house, even if by so doing our taxes could be reduced by half? No, we would do none of these things. We complain about what government costs, but see what government does in return!

Is a government best when it governs least? All this raises the question: How much should the government try



Photos by Brown Brothers and by Ewing Galloway, N. Y.

SOURCES OF CIVIC INSPIRATION

Home, school, manufactory, church, polling booth, playground

to do, and how much should it leave to the people to do for themselves? The old idea was that a government should do as little as possible; it should encourage the people to use their own enterprise, and should not take over new duties except in cases where this seemed to be absolutely needed. This idea has commonly been known as the doctrine of *laissez-faire*, or let-alone. It was sound enough in early times when conditions of life were simple; when most of the people lived on farms and raised or made almost everything that they required. But with the coming of great cities, huge factories, railroads, telephones, motor cars, and all the other developments which have thrown the people more closely into contact with one another—with this great change in conditions of life, it is no longer practicable for governments to pursue the policy of “let-alone.” On the contrary, the people are now calling upon their government to do more and more; to make more laws, to spend more money, and to regulate a larger number of things.

The danger of paternalism. So the tendency is now to pass to the other extreme—for the government to do too much rather than too little. Too much interference in the activities of the people is called *paternalism*. The danger involved in paternalism is that the people will become less resourceful in doing things for themselves. They will wait for the government to take the lead. That is what has happened in some European countries. Many things are better done by individuals, by corporations, or by private organizations than they can ever be done by a government. The government, too, often moves slowly and does its work in a cumbersome way. The ideal is half-way between the two extremes. The government should not

hesitate to undertake functions that can be better performed by itself than by anyone else—maintaining an army, operating the postal service, managing the schools, or inspecting the milk supply, for example.

On the other hand, it ought not to engage in ordinary business enterprises unless cases arise where this action is urgently needed, as sometimes happens. No fixed rule can be laid down as to where the work of a government should stop. It depends upon the time, the place, and the circumstances. In time of war, for example, it may be advisable for the government to take over and manage the railroads, as the government of the United States did during the years 1917-1919, but it by no means follows that the government can best promote the well-being of the whole country by operating the railroads in time of peace.

The steady growth of governmental functions. Three whole chapters of this book are devoted to a description of what the national, state, and local governments do for the people. If you make a list of these functions, you will find that they are not only numerous but of great variety. Note a few of them; defence; protection of life, property, and health; care of the poor; maintenance of law and order; encouragement of commerce; regulation of industry; promotion of agriculture; organized recreation; roads, bridges, and public buildings; regulation of banks, insurance companies, and public utilities; and so on through a long category. What is more, these functions are steadily increasing in number and importance year after year. This being the case, government will come steadily closer to the daily life of the citizen. The citizen should therefore know enough about his government to determine whether it is measuring up to the proper standard and giving a proper

return for the taxes that he pays. Not how much a government does, but how well it does what it sets out to do—that is the real test of success.

What is an adequate government? To be adequate for the needs of the people under modern conditions a government must fulfill three or four essential requirements. *First*, it must be a government responsible to the whole people. It must not be a government dominated by any one class or creed or geographical section, for no government can promote the best interests of the whole nation if it is dominated by only a part. *Second*, it must be a government capable of change to meet new problems and conditions as they arise. The organization of to-day will not fit the country fifty years from now. If a government is not adaptable it will lag behind and get out of date. *Third*, it must have both *order* and *progress* as its essential aims. There can be no real progress without the maintenance of order; on the other hand, order cannot be maintained among the people unless opportunity for progress is given. In other words an adequate government should be always moving forward, but not too fast. It should avoid the extremes of stagnation on the one hand and precipitancy on the other.

Good citizenship. *Fourth*, above all things else, an adequate government must rest on good citizenship. One cannot be a good citizen, however, by merely obeying his government, doing what he is told, and leaving others alone. Good citizenship requires that people shall understand their government—how it is organized, what it does, and whether it performs its work well. Good citizenship demands that we shall be interested in government, not merely on election day but throughout the year. The

good citizen is always on the alert to know more about public affairs so that he may help others to understand them and may suggest ways of improving the system of government. When he finds that it is not adequate, according to his way of thinking, the good citizen should not become discouraged and stand aside, but should do his best to make it adequate. This last point is important. No government is ever perfect. No government ever will be. There will always be room for improvement. But the function of devising improvement should not be left to the officials whom the people elect. It is every good citizen's job, all day and every day.

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QUESTIONS ON THE TEXT

1. How do you define government? Is it an end or a means to an end?
2. How did government originate? Was it created by a "social compact"? What is meant by the term "political evolution"?
3. What is the doctrine of *laissez-faire*? Does it represent the attitude of governments to-day? Name some functions which governments perform to-day, but which they did not in the past.

4. What is meant by "paternalism"? Is it an ideal to be attained in government? What dangers are involved in it?

5. What constitutes an adequate government? Is it one which rests on popular responsibility? Why? Is it one which guarantees the protection of life, liberty, and happiness? Is it one which is able to adjust itself to changing conditions?

6. Classify and describe the different functions of government as they are exercised to-day.

7. Does good citizenship involve going to the polls and voting? Having a thorough knowledge of governmental principles? Criticizing your government when it deserves criticism? Taking a "contributive" attitude rather than an "acquisitive" attitude toward the problems to be solved? Devising improvements to be made? Justify your answers.

8. Define these terms:

- | | | |
|----------------|-----------------|------------------|
| (a) government | (e) state | (i) race |
| (b) monarchy | (f) federation | (j) constitution |
| (c) oligarchy | (g) confederacy | (k) custom |
| (d) republic | (h) nation | (l) law |

QUESTIONS FOR DISCUSSION

1. In 1789, the French people overthrew Louis XVI and established the first French Republic, but it was not until 1871 that France established the third French Republic which has lasted down to the present day. In 1776 the United States threw off the yoke of England, and in 1789 established a government which has lasted up to the present time. Why was the time taken to establish a permanent and stable government longer in the case of France than in the case of the United States?

2. In the period between 1781 and 1789 the Thirteen Colonies were under the Articles of Confederation. During this time there was constant unrest at home and great difficulties abroad. Why was this?

3. Upon what traditions was the United States Constitution built? How did the colonies look upon themselves in 1787?

4. How has the United States been able to last through 140

years of difficult experiences? Did our forefathers anticipate all the changes in the structure of government that time and conditions have asked? Did ~~the~~ Constitution build up a national consciousness which neither sectionalism nor racial divergence has destroyed? Are the immigrant blocs in our large cities a menace to national consciousness to-day? Justify your answers.

TOPICS FOR ESSAYS

1. The Social Compact Theory.
2. The Divine Right of Kings.
3. Primitive Forms of Government.
4. The Development of the Tribe into the State.
5. The Tests of an Adequate Government.
6. The Mayflower Compact.
7. The Fundamental Orders of Connecticut.
8. The Growth of Governmental Functions.
9. Government as a Constructive Factor in National Life.
10. The Limits of Governmental Action.

SUBJECTS FOR DEBATE

RESOLVED:

1. That changes in the form of a government should be accomplished by evolution rather than by revolution.
2. That the League of Nations is a logical step in the evolution of governmental organization.
3. That there is a greater danger of too little government than of too much.

CHAPTER II

THE BEGINNINGS OF AMERICAN GOVERNMENT

1. History has few breaks in it. Nearly every event is the result of something that went before, and paves the way for something that comes after. This is known as the Law of Continuity. It is illustrated by the debt which American political institutions owe to early self-government in England. What features of present-day American government go back to Magna Carta and beyond?
2. In 1734 a newly-appointed governor of New York demanded a portion of his salary before leaving England. John Peter Zenger, editor of the weekly *Journal* in New York City, published an article opposing this demand. He was imprisoned for libel, but was later acquitted on the ground that people "should have the right to expose and resist oppression." Where did they get this right? Who paid the governor's salary? Was this source of payment the same in all the colonies? Who pays a governor's salary to-day?
3. Is it correct to say that the government of an American state to-day is very similar to that of an American colony before the Revolution? What are the chief differences? Are these differences important?
4. Political institutions do not arise and develop by accident. They don't just happen. Their form and temper are often the result of geography, or of race, or of occupation. In New England, during the colonial era and down to the present time, local government based itself on the *town*; in the Southern colonies it rested on the *county* and still does. What did geography have to do with this contrast?
5. When France surrendered Canada to England in 1763, a French statesman predicted that this would be a prelude to the inde-

pendence of the English colonies in America. His prediction proved to be correct within twenty years. What was he thinking of when he made it?

When and where American government began. To find the beginnings of American government, we must go back a long way. Political liberty did not originate in America; it was brought from Europe by the colonists. The colonists inherited from their forefathers a desire for political as well as for religious freedom. When and where, for example, did trial by jury originate, or the position of Speaker in the legislature, or the doctrine that people must not be taxed without their consent? The last is as old as Magna Carta (1215). How far must one go back to find the origin of contracts, deeds, wills, and judgments? Or such writs as the writ of *habeas corpus*? No greater mistake can be made than to imagine that the history of American government began with the Declaration of Independence, or the framing of the Constitution. Some of its features originated in the days of Saxon tribes. Many of them were a part of the English government long before Columbus discovered America. The American people have made a success of their government by adapting and improving things that are old, not by inventing things that were wholly new.

The thirteen colonies. Most of the thirteen colonies were settled by Englishmen. The only important exceptions were New York and Delaware. It was quite natural that Englishmen, when they founded new settlements on this side of the Atlantic, should set up the sort of government with which they were themselves familiar. So they established English law, colonial assemblies, and governors to represent the authorities across the sea. They created

courts with judges and juries. They set up local government in towns and counties. But the colonies were founded at different times and under a variety of circumstances; hence the people did not set up exactly the same form of government in all of them. Some colonies were founded by trading companies (Massachusetts and Virginia); others by private individuals (Pennsylvania and Maryland); still others were offshoots from earlier colonies (Connecticut and Rhode Island). This meant that the people themselves had more to say about their form of government in some of the colonies than in others. Such being the case there were some differences in the amount of self-government obtained by each colony, but these differences were not of great importance.

The colonial legislatures. Let us take a survey of these colonial governments as they existed before the Revolution, for our present political system owes a great deal to them. Each of the colonies had a legislature, usually composed of two branches. The lower chamber of this legislature was commonly known as the assembly, and its members were elected by vote of the people. Not by the whole people, however, for only the owners of property had the right to vote, and in some of the colonies there were also religious qualifications for voting. None of the colonies before the Revolution had manhood suffrage and of course no women were permitted to vote. Yet the suffrage was broader and more democratic in America than in England at this time.

Their organization and functions. The colonial legislatures varied in size, but the members were everywhere elected for short terms and they met in session every year. The lower chamber, or assembly, was the body that con-



SIGNING THE MAYFLOW COMPACT
The first American constitution

controlled the purse-strings, and no money could be raised or expended without its consent. Most of the colonial legislatures had upper chambers also. These were the forerunners of the modern state senates. But except in three states, this upper chamber was not exclusively a legislative body; it also served as an advisory board to the governor. With the governor presiding, it frequently performed the functions of a high court, hearing appeals from lower courts. Thus, in a way, the upper chamber of the colonial legislature served as a connecting link between the executive, legislative, and judicial branches of the government.

But although it had varied functions, the upper chamber did not equal the assembly in power. The latter undertook to control, and to a considerable extent did actually control, all matters of taxation and expenditure. If the worst came to the worst, it could even shut off the governor's salary, for no appropriation could be voted and no law enacted without the assembly's consent. Hence the colonial assembly had about as much power as the lower branches of our state legislatures possess to-day. But its sessions were much shorter, its work was not so complicated, and it made fewer laws.

The governor. Each of the thirteen colonies also had a governor as its chief executive. In eight colonies this official was appointed by the English crown and served as its representative; in the other five the governor was either elected (as in Connecticut) by the people or appointed (as in Pennsylvania) by the proprietor of the colony. The position of the colonial governor was something like that of the king in England; that is, he was the executive head of the government but not the most important factor in it.

His powers. The governor called the colonial assembly

together and could dissolve it. He could veto its acts or could withhold his assent until the matter had been referred to the home authorities in England. But he had no power to impose taxes on the people without the consent of the assembly. This gave the assembly a real measure of control over the entire government, for there was little that the governor could do without money, and the only way of getting any considerable amount of money was by taxation. So with appointments. The governor made all appointments but the assembly voted the salaries. Likewise the governor enforced the laws which the assembly made; he commanded the colonial militia and had the power of pardon. It is important to know this, because the powers possessed by the colonial governor have largely descended to the governors of the forty-eight states to-day.

His assistants. The governor had advisers or "assistants," as they were sometimes called. They were appointive officers, and their chief function was to help him conduct the executive branch of the government. Together these assistants or advisers, in most of the colonies, formed a council which served as the upper branch of the colonial legislature and sometimes performed the functions of a court, as explained in an earlier paragraph.

The colonial courts. This raises the question as to how justice was administered in colonial days. There were courts in all the colonies, organized on the English model. At the bottom of the ladder were the local courts, each with a justice of the peace or similar magistrate at its head. These justices were for the most part appointed by the governor, but occasionally they were elected by the people of the town or county. Above the local courts were county courts, each with a county judge (who was always ap-

pointed); and finally there could be an appeal to the governor and his council. Such appeals, however, were not frequent. Most of the cases were heard and determined in the local and county courts. When a controversy of great importance arose, an appeal might be carried to England, where it was heard by the Privy Council, which was a body of royal advisers. Trial by jury was used in the colonies, and the colonists claimed all the other safeguards of personal liberty.

Why the colonial governments failed to satisfy. On the face of things it might seem as if the American colonists were well treated by England and had few political grievances; but the restrictions were in fact quite bothersome. In the first place, most of the people had no voice in the selection of their governor or the governor's advisers. Laws made by their representatives might be vetoed by this governor; or if approved by the governor, they might be disallowed by the home authorities in England. Important lawsuits likewise might be appealed across the Atlantic. All this irritated the people. They felt that inasmuch as they contributed the entire cost of running the government, they ought to have a controlling voice in it. Yet it was not merely the defects in their form of government that inspired the people of the colonies to revolt against England. They had commercial grievances also, as will be seen later. Their trade was regulated and taxed without their consent. That was what caused the final breach. Most revolutions in history have had economic as well as political causes.

The colonies were not all alike. One is apt to think, nowadays, that the people of all the thirteen colonies were

much alike in their manner of life and point of view. But this was far from being the case. There were great differences between the northern and southern colonies—greater differences than exist between the northern and southern states to-day. In Massachusetts, Rhode Island, and Connecticut most of the people were engaged in mixed farming. Their farms were relatively small and they lived close together in towns. Nearly the whole population in these three colonies was of English stock; they spoke the same language and professed the same religion. In Virginia and Georgia, on the other hand, the people cultivated large plantations. Hence they were more widely spread over the country, lived at greater distances from each other, and were organized into counties. They were people of more aristocratic political ideas and did not all share a common religious faith.

Effect of these differences: the New England town. As a result of these differences, the forms of local government became quite unlike in the two regions, North and South. In the New England colonies, the town system prevailed. Each small group of settlers, sometimes a hundred or less, would set up a town and govern it according to their own democratic ideas. They held town meetings, which all the men of the town had the right to attend, and at these town meetings they decided all matters of neighborhood importance. They levied their own town taxes, decided how the money should be spent, and in the town meeting elected their representatives to the colonial assembly. During the interval between town meetings, the business of the town was managed by a small board of selectmen, chosen by the people. This town system of

government was simple in form and democratic in spirit. It did much to encourage democracy in the New-England colonies.

The southern county. In the southern colonies, on the other hand, the county system prevailed. The county covered a far larger tract of territory than the town, and the people could not easily come together at frequent intervals for a general meeting. Most of the county officers were appointed by the governor and a good deal of administrative work was performed by the justices of the peace who were similarly appointed. The voters of the county, that is, the owners of property, elected the county's representatives in the colonial assembly, and for the most part the political power drifted into the hands of the large plantation owners. This plan of local government was less democratic than the system in New England.

The town-county system in the middle colonies. The middle colonies, including New York and Pennsylvania, had neither the town nor the county system but a combination of both. For a time it was doubtful which of the two areas of government would become the more important, but in the end the county was found to be the better unit. Towns and townships remained, however, and continued to deal with neighborhood matters. This system, with some changes, has continued in the middle states of the Atlantic seaboard down to the present day.

The common bond in all the colonies. So there were three general divisions—New England with its democratic system of town meetings, the southern colonies with their more aristocratic county courts, and the middle colonies which bridged the gap between the two. But all three parts of the country were alike in their earnest desire to

manage their own affairs, both political and commercial, without interference from any higher authority. The people everywhere believed in home rule and individual liberty. Even the southern colonies became steadily more wedded to this point of view as time went on. The desire for full self-government was natural, because the conditions of pioneer life always dictate a preference for political equality and freedom. There was no order of nobility in any of the colonies; land was cheap and abundant; any honest and hardworking man could become a landowner in his own right. Hence there was no wide variation in social standing or wealth, such as existed in England at that time.

The early attitude towards England. For more than a hundred years after the first settlement of the country, the colonists were friendly to England. Save in New York and Delaware, they called England their mother country. The existence of a common language, common laws, and ties of blood relationship made this friendship sincere. On both sides of the Atlantic the same books were read, the same songs were sung, and the same stories told around the fireside. The colonists were proud of their race, but also jealous of their own liberties. Democracy made more rapid progress in America than in England because the conditions affecting its growth were more favorable. They always are in a new country. In time, therefore, people of the same race on opposite sides of the ocean were found to have quite different political ideas. This difference in point of view led to misunderstandings and caused them to drift apart.

The situation prior to 1763. It is difficult to fix an exact date for the beginning of the controversy between

England and the thirteen colonies. There was very little friction prior to 1763. English interference with colonial government down to that time was not serious enough to create much dissatisfaction. Even if there had been discontent, the colonies were weak, disunited, and defenceless. They could not have waged a successful revolt. They had no army, nothing but a volunteer militia in each colony. They had no navy. They had no central government which would enable them to act together. Moreover, a powerful European country, France, was entrenched in the north, along the St. Lawrence River and the Great Lakes. French traders were on the Ohio and the Mississippi, building forts in that region. France was trying to hem the English colonies between the Alleghenies and the sea. Another European nation, Spain, owned Florida and other territory to the south. What if these two countries should join hands to take possession of the Atlantic seaboard? England would then be much needed as a protecting parent. The colonists, down to 1763, could not lose sight of the fact that they needed England's military and naval support, no matter how much it might cost or how much sacrifice on their part it might involve. Without England's aid they would be in a dangerous position. Independence was out of the question.

How the victory of England over France changed matters. But in 1763 the whole situation altered. France was defeated on the St. Lawrence and forced to withdraw from America. By the Treaty of Paris, in that year, she gave to England the whole of Canada, the Great Lakes region, and the valley of the Ohio which Frenchmen had claimed for themselves. At one stroke this relieved the English colonies from what had been their greatest mili-

tary danger. They no longer needed, at least they did not need so badly, the mother country's protecting assistance. About the same time, moreover, English policy toward the colonies began to undergo a change. The great war with France had been costly to England and had greatly increased her national debt. The English government felt that the colonies, having derived great benefit from the outcome of the war, ought to help pay for it. Accordingly, the English Parliament passed some revenue measures which attempted to tax the colonies both directly and indirectly. Not only that, but the home government now began rigidly to enforce some half-forgotten laws (the Navigation Acts) which aimed to keep the colonies from trading with countries other than England, thus assuring to Englishmen all the profits from colonial commerce.

The first breach. No one of these events or measures would in itself have caused serious trouble. The taxes on tea and other goods were not heavy. The colonists did not object to the amount. What they objected to was England's claim to levy any taxes, whether big or little, without giving the colonies the right to be represented in Parliament. They denied the right of Parliament to tax them without representation, to regulate their trade, or to exercise any control over their colonial affairs. In this the American colonists were claiming nothing more than the same rights which Englishmen had been granted at home. For hundreds of years Englishmen had been asserting the doctrine of "no taxation without representation."

The eve of independence. This is not the place to narrate the events which followed in quick succession—the Boston Tea Party, Concord, Bunker Hill, Saratoga, and Yorktown. Once the first shot was fired, there could

be no hanging back. The embattled farmers, having taken their muskets, had to see the Revolution through. So events moved rapidly during the years 1773-1776. A Continental Congress, made up of delegates from all the colonies, met at Philadelphia. Then a second one was called. This Second Continental Congress appointed Washington to command the army and assumed direction of the colonial cause. On July 4, 1776, it formally declared the thirteen colonies to be free and independent states. This Declaration of Independence is printed in most historical reference books and should be carefully read, for it is one of the great landmarks in the history of political liberty.

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QUESTIONS ON THE TEXT

1. What is meant by a "legislature"? Who chose the colonial legislators? What were their qualifications? Was the colonial legislature *unicameral* or *bicameral*? Did the upper house have as much power as the lower? What were the duties of (a) each house, (b) the legislature as a whole?

2. How were the colonial governors chosen in (a) New York, (b) Massachusetts, (c) Connecticut, and (d) Pennsylvania? What were the governor's duties? Are the functions of the state governors to-day like those of the colonial governors? Wherein are they differ-



Photo by Underwood and Underwood

THE BIRTH OF A NATION

July 4, 1776

ent? Did the colonial governors have advisers? How were they chosen? What were their duties?

3. Describe the colonial system of courts. How were the judges appointed? What was the *privy council*? What were the "rights of Englishmen"? Why did the colonists claim them?

4. Were the colonies alike in (a) origin, (b) topography, (c) the occupations of the people, (d) religious belief, (e) point of view? How did these differences affect their local government?

5. Describe the town form of government. Why is it sometimes called "the genesis of American democracy"? How did the town meeting function? How were the selectmen chosen and what were their duties?

6. Describe the county form of government. Where was it found? Who chose the county officers? What were the duties of a justice of the peace in colonial days?

7. Describe the town-county system of government. Where was it found? Was it satisfactory? What modifications did it undergo?

8. What was the early attitude of the colonies toward England? When and why did it change? If, in colonial times, there had been rapid means of communication and transport (as there are to-day), would the colonial attitude have changed? Why?

9. How did the French and Indian wars prepare the colonies for the Revolutionary War?

10. In what way was the British defeat of the French a turning point in American history?

11. "The American Revolution was a natural conflict between two ideas of government." Explain.

12. The American colonists felt that they were subjects of the English king, but not subject to the control of the English Parliament, because the colonial charters had been granted by the king. Parliament felt, on the other hand, that inasmuch as it was the only lawmaking body in England it had the right to make laws for the colonies. Which was right?

13. "The American Revolution secured political independence for the thirteen colonies, but failed to achieve democracy." Explain.

14. "The Fathers of the Constitution, in their wisdom, saw the

need of local independence and of coöperative action. By blending them together in a manner satisfactory to all, they laid the foundations of an enduring government." Comment upon this statement.

15. Enumerate the "democratic principles" set forth in the Declaration of Independence. What does the Declaration mean when it speaks of the right to "life, liberty, and the pursuit of happiness"?

QUESTIONS FOR DISCUSSION

1. The colonial tradition of local independence was due to the following factors:

- (a) The colonies were founded at different periods and from different motives.
- (b) They were widely separated from one another.
- (c) They were treated as separate units by England.
- (d) They differed in occupations, religious belief, and point of view.

Arrange these factors in their order of relative importance.

2. The colonial tradition of united action was due to the following factors:

- (a) A common language
- (b) A common law system
- (c) Common dangers and enemies
- (d) Service together in the French and Indian wars
- (e) The New England Confederation
- (f) The Albany Congress
- (g) The Stamp Act Congress
- (h) The First Continental Congress

Place these in their order of importance.

3. Is democracy a form of "government of the people, by the people, for the people"? Explain. Who first used this expression?

4. Place the following countries in order, from the most democratic to the least democratic: England, France, Germany, Russia, Switzerland, United States.

5. What did Joseph Cook mean when he said that "a monarchy is like a man-of-war, because bad shots between wind and water

start it exceedingly, and there is danger of capsizing; but democracy is like a raft because you cannot easily overturn it?"

6. What did Coleridge have in mind when he said that democracy is the healthful life blood which circulates through the veins and arteries, and which supports the human system, but which ought never to appear on the outside as an evidence of wounds?

QUOTATIONS FOR COMMENT

1. Forms of government become established of themselves. They shape themselves, they are not created. We may give them strength and consistency, but we cannot call them into being. Let us rest assured that the form of government can never be a matter of choice: it is almost always a matter of necessity.—*Joubert*.

2. Government is a contrivance of human wisdom for human wants.—*Burke*.

3. Government exists to protect the rights of minorities.—*Wendell Phillips*.

4. The government of a nation itself is usually found to be but the reflex of the individuals composing it. The government that is ahead of the people will be inevitably dragged down to their level, as the government that is behind them will in the long run be dragged up.—*Samuel Smiles*.

5. A government which takes in the consent of the greatest number of the people may justly be said to have the broadest bottom; and if it be terminated in the authority of one single person it may be said to have the narrowest top; and so makes the finest pyramid.—*Sir Wm. Temple*.

TOPICS FOR ESSAYS

1. The New England Town. 2. County Government in Virginia. 3. Early Local Government in Pennsylvania. 4. The Intercolonial Wars—Their Causes and Results. 5. The American Revolution—Its True Causes. 6. The New England Confederation of 1643. 7. The Albany Congress of 1754. 8. The Stamp Act Congress of 1765. 9. The Committees of Correspondence, 1773. 10. The First Continental Congress, 1773. 11. The Declaration of Inde-

pendence as a True Statement of Grievances. 12. The Treaty of Paris, 1763. 13. The Development of Democracy in Colonial Massachusetts. 14. Political Life in the Middle Colonies. 15. Politics in the South during the Colonial Period. 16. The Navigation Acts and their Enforcement. 17. The Trade Acts. 18. The Government of the Charter Colonies. 19. The Provincial Governor. 20. Courts of Equity in the Colonies. 21. What We Owe to the Colonial Governments.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the differences in political stability between English-speaking America and Latin-America are due to the form of government and to geography rather than to differences in language and in race.

2. That the town meeting of Massachusetts afforded a better school for the training of political leaders than the county government of Virginia.

CHAPTER III

HOW THE STATES BECAME A NATION

1. To a certain extent, North and South America have been similar in political development. Both were colonized by European countries. In both continents these colonies revolted, declared their independence, and set up republican governments. But there the analogy ends. In North America a union of the states was accomplished; in South America this was not the case. Can you give some idea of the far-reaching effects that have come from this difference?
2. The "critical period of American history" covered the years 1783-1787. Why were these years more critical than the Civil War period?
3. The events of the twenty years intervening between 1770 and 1790 can be summed up in the words, "Liberty, Democracy, Union." What events come under each head?

Independence leads to confederation. The Declaration of Independence did not make the thirteen colonies free. They had still to win their freedom. To do this it was necessary for them to hold together; hence some sort of union or confederation became essential. They could not hope to win the war except by combining their forces. Since 1775 the Second Continental Congress had been serving as a joint council for all the states. It was trying to raise men and money for the war. The several states coöperated with it in doing this, but the Continental Congress had no regular legal powers. It was a voluntary organization. Its members had been chosen in a variety

of ways—by the state legislatures, by conventions, or by mass meetings of the people. In some cases these delegates from the states to the Continental Congress were virtually self-appointed.

The Articles of Confederation. Something more than this voluntary plan was needed as a permanent organization, so the Congress proceeded to frame a document by which the thirteen states could be held together, no matter how long the war might last. This document was known as the Articles of Confederation. The articles were drafted in 1777, after a good deal of discussion, and were at once sent to the legislatures of the thirteen states to be ratified. The Continental Congress did not wait for all the states to act, however, but put the Articles of Confederation into effect immediately. One by one the states accepted the Articles during the next four years.

Their importance. The Articles of Confederation deserve attention, for they paved the way to a better and closer union ten years later. It is the custom of some writers to brush them aside with a mere mention because the Confederation turned out to be a failure in many respects, but the fact remains that had it not been for the Articles we would probably not have had the Constitution, at least not in its present form. The Constitution grew out of the Articles. It was framed because the Articles needed revision and improvement. Perhaps we should be thankful that the men who drafted the Articles of Confederation did not make a better job of it. The experience of the country during those critical years taught the people that a strong central government was needed.

The organization of government under the Confederation. By the provisions of the Articles, the thirteen states

agreed to become members of a "perpetual union"; nevertheless each was supposed to retain its own independence. A central body, known as the Congress of the Confederation, was set up. It was composed of delegates from the states. Each state sent at least two delegates and not more than seven. The number did not matter because each state had but one vote in the Congress of the Confederation, no matter how many delegates it sent. The delegates were chosen as each state saw fit, but in actual practice they were all appointed by the state legislatures. This Congress elected its own presiding officer, but he was not President of the United States and he had no executive powers. It also appointed other officers, including a superintendent of finance, a secretary of war, and a foreign secretary. In addition it had some committees.

The drift to disunion. So long as there was any danger that the war might be lost, the thirteen states held well together and supported the Confederation. In most cases they provided money and men when called upon. They refrained from serious disputes among themselves. But when the successful outcome of the war seemed at hand, they then began to act differently. Calls for money, when sent out by the Congress of the Confederation, went unheeded. Disputes over state boundaries became numerous and aroused bad feeling. The country was flooded with depreciated paper money which had been used to pay the troops because there was nothing else to pay them with.

The treaty of peace which recognized the independence of the thirteen states in 1783 did not improve matters. If anything, it made the situation worse, for the need of a united front against a common enemy had now disappeared. The revolutionary armies were disbanded, and as neither

officers nor men had been paid in full, they were in a resentful mood. Prices were high, as they always are after a war, and the Congress was blamed for the high cost of living. When things go wrong people usually blame the government. Some of the states tried to improve their own trade by setting up tariffs against the other states and this caused much bitterness among them. A drift to disunion was setting in. There was even some talk of war between the states.

Why Congress could not prevent it. Why did not the Congress of the Confederation undertake to relieve this situation? It would have done so if it had possessed the power. But the Articles of Confederation gave it no authority to arbitrate disputes among the states, or to restrain them from setting up their own tariffs, or to prevent them from issuing paper money. It could not enforce obedience to its orders. Some of the states stopped sending delegates to the Congress and virtually ignored its existence. Hence the government of the Confederation, after the war came to a close, was little more than a scheme on paper. It had no real power and was accorded very little respect from the people. It had the right to make treaties, but foreign nations were not inclined to negotiate treaties with so weak a government. It was authorized to borrow money, but who would lend money to a government which had no sources of revenue from which to pay interest on the loans? It could issue paper money, but who would take the paper money of a government that had no credit and might soon go out of existence?

The problem of the western territories. There were other difficulties. By the Treaty of 1783, England had promised to surrender a large area of western territory

which lay outside the boundaries of the original states; but who was to take this territory and govern it? Several of the states were claiming portions of this region, and in some cases two or three states laid claim to the same section. Inasmuch as these claims were based upon old treaties with the Indians, which did not define exact boundaries, one state's claim was about as good as another's and there was no supreme court to decide between them. For a time there was danger that the states would come to blows over these rival claims. The suggestion was made, however, that all of them should peaceably give up their claims and let the Confederation have this western territory. It would then be used for the common benefit and ultimately organized into additional states. This wise suggestion was followed. One by one the various states agreed to surrender their claims, and in 1787 the Congress of the Confederation adopted the famous Northwest Ordinance which provided a temporary government for this region and thus avoided what might have ended in serious trouble.

The new state constitutions. Meanwhile all the states had adopted constitutions of their own. Virginia was the first to do this, and Massachusetts the last. These thirteen new state constitutions differed from one another in detail, but in general features they were much alike. In every state provision was made for a governor who was to be chosen by the state legislature or elected by the people. Likewise in every state a legislature was set up. Courts were also established by these new constitutions. In a word, the general framework of state government was given the form which it retains to-day.

Bills of rights. Another feature of the first state constitutions was the inclusion of "bills of rights" in most of

them. A bill of rights is a list of rights which the constitution guarantees to the citizen—the right to freedom of speech, freedom of worship, trial by jury, and so on. There was a widespread idea that all governments, whether monarchies or republics, were likely to become despotic and to infringe on the liberty of the individual citizen. One way to safeguard the citizen against this, people believed, was to insert in the constitutions various checks on the government. It has proved to be a good plan, on the whole, although even constitutional guarantees have not always availed to protect the citizen from unjust treatment at the hands of public officials.

Some features in these state constitutions: checks and balances. One important difference, however, should be noted. Only two of the thirteen states adopted at this time the principle of “checks and balances” which now forms the basis of government in all the states. These were Virginia and Massachusetts, both of which provided that the executive, legislative, and judicial branches of state government should be kept independent, so that each might be a check and balance on the others. The remaining eleven states did not, at the outset, adopt this principle, but in general gave the dominant power to the state legislature. It was only with the lapse of time that the principle of checks and balances worked its way into the government of these remaining states, after it had been given recognition in the new Federal constitution of 1787. The states did not include the checks and balances in their first constitutions because they desired to retain, as far as possible, the plan of government to which they had become accustomed when they were colonists.

The changes from the colonial frame of government

were not great. In nearly all respects, indeed, the new state constitutions set up governments which were not radically different from those of colonial days. The people of the thirteen states merely overhauled their old governments and made some changes in the direction of more democracy. They felt that their colonial legislatures would have functioned well enough if the English Parliament had let them alone. Bear in mind that the American Revolution was not a sweeping overturn, like the French Revolution of 1789, or the Russian Revolution of 1917. It did not shift power from one class to another and set up wholly new organs of government. It was the theory rather than the practice of government that underwent a change. English control came to an end. The people now called themselves free and independent. They could no longer be taxed without their own consent, but the taxes were higher than before. The new constitutions did not give every citizen the right to vote. Property qualifications and religious tests continued as before. The old laws were not swept off the books. The common law of England remained the law of the land. Towns and boroughs and counties were governed as before—by the same town meetings, aldermen, or justices of the peace. The changes were so slight, in some cases, that the new constitutions were simply the old colonial charters, copied almost word for word with a few amendments, as in the cases of Rhode Island and Connecticut.

The tradition of self-government in 1783. So here was the situation in 1783, after the treaty with England had been signed: The thirteen colonies had become states, independent of England and virtually independent of one another. They had framed their own constitutions; they

had set up their own state governments, and these governments were hard at work. The state legislatures were issuing paper money, setting up tariffs, disputing with one another about boundaries, and each trying to monopolize its own harbors, when it had any. In a word, each state was striving to increase its own prosperity without regard to the others. Everyone spoke of himself as a citizen of Virginia, or Pennsylvania, or Maryland—always of his own state and never of the United States; for the states were no longer united except in name. The rest of the world looked on, as we do at Central America to-day, and was amused at these thirteen little republics each trying to be a nation by itself.

The ghost of a central government. Down in the old brick hall in Philadelphia, meanwhile, a body which called itself the Congress of the Confederation was trying to keep itself alive, but often it could not muster enough delegates to get a quorum. Even with a quorum, there was little business to be done. This Congress had a treasury, but there was no money in it. It had an army on paper, but no funds to pay the soldiers in case they were called out. It could print paper money, but this "continental currency" was hardly worth the paper that it was printed on. It had the right to borrow funds, but could find no one willing to lend except at exorbitant rates of interest. The states could collect customs duties and get revenue in that way; but the Confederation could not, for it had no power to regulate trade. All in all, it was merely a ghost of a government, without the powers or prestige which make a government worthy of the name.

The most critical danger of this era. Under such conditions there was a real danger that the thirteen colonies

might lose their independence even more quickly than they had won it, for there were potential enemies round about. England still held Canada. Spain owned Florida and the vast territories which now constitute the southwestern part of the United States. France had helped the colonies to gain their independence; but the government of France was a despotic monarchy at this time, and there was no telling how long it would remain on friendly terms with thirteen little republics three thousand miles away. What if these three nations should make a bargain to reconquer the country and divide the spoil? With the states united there would be no danger of this; but if they fell to quarrelling among themselves and started a real civil war, the danger of outside interference would be very great. The Congress of the Confederation was doing its best to keep them united and at peace; but it was too weak to handle so big a job. What the Confederation needed was (a) the power to raise money by taxation, (b) the power to regulate trade, and (c) power to settle controversies among the states. With these powers it could preserve unity; without them it would soon die of general debility.

Attitude of the leaders. Thoughtful men like Washington, Jefferson, Franklin, Madison, and others realized the critical nature of the situation. They saw what was needed. Unless something were done the Confederation would go bankrupt; its Congress would cease to meet altogether, and even the ghost of a central government would disappear. Debts which had been contracted in Europe to finance the war would remain unpaid, and so would the wages due to soldiers who had fought in the Revolution. Government bonds would be worthless. There would be thirteen governments making treaties and tariffs,

thirteen different kinds of paper money, thirteen armies, and thirteen supreme courts in the country. Trade and friendly intercourse throughout the whole country from New Hampshire to Georgia would be difficult at best and even impossible. Surely this was no way to make America a great and prosperous nation! So the leaders busied themselves with a project to strengthen the Confederation before it went to pieces.

The Annapolis convention. Now it happened that at this time (1786) a convention was being held at Annapolis to consider some questions relating to the navigation of the Potomac River. Virginia and Maryland, which bordered on the river, were much concerned in the question. Pennsylvania and Delaware were indirectly interested and hence received an invitation to join the conference. With four states ready to come, it was suggested that all the rest be invited so that the whole question of regulating trade might be discussed, and this was done; but there was no general acceptance. When the convention assembled, only five states were represented. It was agreed, therefore, that the convention should adjourn to meet the following year at Philadelphia, and that meanwhile all the states should be again urged to send delegates. To secure the interest of the states in the Philadelphia convention, it was decided that the purpose of the meeting should be widened to include a general discussion of all matters affecting the Confederation, and not commercial matters alone. Nothing was said about framing a new constitution.

The Philadelphia Convention. Some of the states accepted this invitation promptly; others held off until they had been urged by Washington, Hamilton, Madison, Franklin, and other leaders to take part. In the end, all

~~ex~~cept Rhode Island responded to the call and sent delegates. They had been invited to send at least three each and not more than seven—with the understanding that each state would have one vote at the convention. These delegates were summoned to meet at Philadelphia on the second Monday in May, 1787.

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QUESTIONS ON THE TEXT

1. Did the Declaration of Independence make the thirteen colonies free? If not, what did it do?
2. What were the powers of the Continental Congress? Where did it get its powers? How were its members chosen? What document did it frame? When was this put into effect?
3. Point out the importance of the Articles of Confederation in the political history of the United States. What were the chief defects in the Articles? What was the result? How was the Confederation organized?
4. Could the Congress of the Confederation (a) levy taxes, (b) regulate trade, (c) make treaties, (d) borrow money, or (e) declare war? Under what conditions in each case?
5. Why was the government under the Articles of Confederation inadequate to deal with foreign affairs? Can a government function unless it has definite sources of revenue? Why?
6. How did the national spirit express itself in the matter of a "national domain"? Were the states right in surrendering the Northwest Territory into the hands of the Confederation?

7. What is meant by "checks and balances"? Where did the idea originate? Did the new state constitutions adopt it? If not, how did it get into the American system of government?

8. What was the situation among the states in 1783? What foreign danger was on the horizon?

9. Is it correct to call the government of the Confederation a "ghost of a government"? Why, or why not?

10. How did the expression "not worth a Continental" arise?

11. What was the Annapolis Convention? The Philadelphia Convention?

QUESTIONS FOR DISCUSSION

1. Is *Magna Carta* an American document? What provisions in the bills of rights of American state constitutions were drawn from it?

2. What was Shays' Rebellion? How does it illustrate conditions in the Critical Period?

3. How could the Articles of Confederation be amended? Why were they not amended?

4. What were the provisions of the Northwest Ordinance? What states have been created out of this territory?

5. What serious dispute arose between New York and New Jersey before 1787?

6. What features in the Articles of Confederation were carried over into the Constitution?

TOPICS FOR ESSAYS

1. Colonial Coöperation. 2. The Treaty of 1783. 3. Shays' Rebellion. 4. The War with Tripoli. 5. The Northwest Ordinance of 1787. 6. The Mercantile System. 7. The Imperialism of George III. 8. Difficulties at Home during the Colonial Period. 9. Difficulties Abroad during the Colonial Period. 10. The Articles of Confederation: An Analysis. 11. The "Know Ye" Acts of Rhode Island. 12. The Continental Currency. 13. The Society of the Cincinnati. 14. Baron Montesquieu, and the Theory of Checks and Balances. 15. Bills of Rights in State Constitutions. 16. The Annapolis Convention.

SUBJECTS FOR DEBATE

RESOLVED.

1. That the Articles of Confederation were an absolute failure.
2. That the system of checks and balances is a hindrance rather than a help to progress and efficiency in government.

CHAPTER IV

THE STORY OF THE CONSTITUTION

1. In an automobile factory you will see men putting a car together in a few hours. Do you imagine that they *make* the car in that short space of time? How long did it take to *make* the Constitution of the United States?
2. The people of the United States, as such, had no direct share in the making or in the adoption of the national Constitution. They did not elect the delegates to the convention; these delegates were appointed by the various state legislatures. The Constitution was not submitted to the people for their acceptance. It was ratified by state conventions, the members of which were in some cases elected by the people, but not in others. Why were things done in that way?
3. The first great "campaign of political education" in the United States was conducted in behalf of the Constitution. Who were its leaders and how did they do it?

When did the framing of the Constitution begin? In writing the story of the national constitution, it is hard to tell where to begin. If you start with the convention which framed it in 1787, you will find that there were constant references to the state constitutions that had been adopted during the preceding ten years. If you go back to the state constitutions, you find that they cannot be properly understood without knowing all about the colonial charters. And these colonial charters had their origin in the grants of privileges which had been made to early commercial companies, like the Virginia Company. These,

again, grew out of English corporate privileges which were very old. Some of them go back to Roman times. So the framing of the American Constitution did not begin at Philadelphia. It began in the primitive customs of the Anglo-Saxon tribes. There are many things in it which cannot be fully and clearly understood without a knowledge of the long struggle between the king and the people in England.

The desire for union. From the very foundation of the thirteen colonies, it was almost inevitable that they should ultimately form themselves into a union. Several times before the Revolution they had tried to do it. In 1696 William Penn urged the establishment of a congress representing all the colonies and in 1701 Robert Livingston brought forward a scheme of union. Benjamin Franklin, in 1754, laid before the Albany Congress an elaborate plan for welding all the colonies together. But none of these plans found acceptance until the troubles with England arose. There was too much local jealousy. The little colonies, such as Rhode Island, New Jersey, and Maryland were suspicious of their big neighbors, Massachusetts, New York, and Virginia. The elusive spirit of coöperation was chased away by the spirit of distrust and by the tradition of local independence.

Why it prevailed. But a common danger finally brought these colonies together. The spirit of coöperation got the upper hand because the colonies realized the force of the saying, "United we stand; divided we fall." So together they fought the war and agreed to the Articles of Confederation, in spite of the sentiment for local independence, because the only alternative was to be crushed one by one. During these years they learned, to some

extent, the advantages of unity. They had one postal service for all, one flag, one outstanding leader. Even so, it was hard to get the states into a permanently united nation. When they sent their delegates to the convention at Philadelphia in the spring of 1787, they had no idea that this convention would draft a wholly new constitution and spring it on the country. They imagined that the delegates would merely discuss the Articles of Confederation and recommend a few changes. But some of the leaders wanted a wholly new constitution, and they had their way. The Articles were thrown aside and the Convention of 1787 proceeded to build anew from the ground up.

The men who framed the Constitution. Who were the delegates now assembled to become the framers of the American Constitution? For a long time they were pictured to the public imagination as a body of supremely wise men, all actuated by the highest ideals; indeed, as the most wonderful galaxy of patriots that has ever been gathered together anywhere. The Constitution proved an immediate success after its adoption; the country became prosperous under it, and of course this resulted in great glory to the men who made it. More recently it has become the fashion to sneer at these Fathers of the Republic, to point out that they were mostly rich men, and to insinuate that they were actuated not so much by patriotism as by a desire to fasten on the country a government which should be controlled by men of wealth and property. The truth, however, is that neither of these viewpoints is the right one. The Convention of 1787 contained men of varying types—some very wise men, some who were not so wise, and some who showed very little wisdom. Some were large-minded; others were narrow. Some were

patriots of high degree, while some others, if they had any patriotism, failed to show it. The convention contained a few men of great political genius, a few who were real leaders, a few who were merely good politicians, a few who said little but voted right, and a few who tried to talk all the time. It was not made up of saints or sinners, but of both. Most of the delegates tried to make the convention a success, while some were merely obstructionists. Of the fifty-six men who signed the Declaration of Independence in 1776, only six were members of the Constitutional Convention.

Their good sense and experience. There were fifty-five delegates representing twelve states.¹ Not all of these were present at the same time, and indeed the average attendance was less than thirty-five. Pennsylvania sent her full quota of seven, while New York appointed only three and they were absent most of the time. On the whole the convention was a conservative body, inclined to act cautiously and not to embark upon rash experiments. A majority of the delegates were lawyers by profession. Others were merchants and large landowners. There was not a single small farmer or manual laborer among the delegates. This was largely due to the fact that travelling to Philadelphia was difficult and expensive. Still the delegates formed a fairly good cross-section of the whole population. Its greatest virtue was the inclusion of many delegates who had remarkably good sense in political matters. And this was partly because of their long experience in politics. Most of them had held public office in the colonies, or under the Confederation, or in the states. They were not much concerned with theories of government.

¹Rhode Island was not represented.

They were ready to compromise for the sake of harmony. They knew the dangers that the country would have to meet if they failed. Above all, they had good leadership and were ready to follow it.

The Big Four. Who were these leaders? Washington headed the Virginia delegation and was unanimously chosen to preside over the convention. As presiding officer, he felt himself debarred from taking an active part in the debate, but his personal influence was great. James Madison also came to represent Virginia and took an active part in the discussion. He was a relatively young man at this time, only about thirty-five, but a scholar in politics and widely read. He had studied a great deal about government and on this matter was the best informed man in the convention. Much of what we know about the proceedings in the convention is due to Madison's methodical industry, for he kept a private diary in which he jotted down an account of what happened day by day. This journal is now in the Library of Congress.

Benjamin Franklin of Pennsylvania was the wisest man in the whole group—a philosopher, scientist, journalist, and statesman all rolled into one. But he was now eighty-one years of age and his voice was almost gone. He could not speak above a whisper, and so he had to write his opinions on slips of paper. But Franklin's mind was as good as ever and some of the best suggestions came from him. A very different man from Franklin was Alexander Hamilton of New York—young, aggressive, eloquent, with intense and somewhat intolerant views. Hamilton was an extreme conservative and wanted a strong central government. Very few of the delegates agreed with him. They applauded his speeches and then voted his motions down.

The lesser lights. These four were perhaps the outstanding figures in the convention, but there were others almost as eminent. James Wilson, Gouverneur Morris, and Robert Morris of Pennsylvania were active figures and worked together. Roger Sherman of Connecticut, William Paterson of New Jersey, the two Pinckneys of South Carolina, Edmund Randolph of Virginia, and Rufus King of Massachusetts were helpful members. Lansing and Yates of New York, and Luther Martin of Maryland were among the foremost objectors in the convention. The remaining delegates included men whose names are now largely forgotten by the public, but the country owes them a debt of gratitude for their patience and industry during that hot summer of 1787.

The notable absentees. You will notice, of course, that some outstanding figures of the time were not members of the convention. Thomas Jefferson was absent; he was in France on a diplomatic mission. Patrick Henry of Virginia refused to be a delegate. He was not in favor of a stronger union. John Hancock, Samuel Adams, John Adams, and John Marshall were not there. They had various reasons for not being present. In spite of these absences it can fairly be said that the convention numbered in its ranks most of the country's first-rank statesmen.

How the Convention did its work. The delegates assembled in May, 1787. The sessions were held in the old brick State House in Philadelphia, the building in which the Declaration of Independence had been signed eleven years before. The convention met behind closed doors and the delegates were pledged to secrecy. This action was widely criticized, and all sorts of rumors got afloat in the absence of publicity. Many people thought

that the convention was planning to make an all-powerful union and destroy the independence of the states. Sessions were held each week day from May to September; committees were appointed and brought in reports; matters were considered and reconsidered, debated, postponed, taken up again, and dealt with from every point of view.

Big states versus little states. At the very outset it became clear that there were two opposing factions represented. One faction, chiefly of delegates from the smaller states, desired that the convention should merely revise the Articles of Confederation; the other faction, mostly from the larger states, favored discarding these Articles altogether and framing a wholly new constitution with provision for a strong central government. Rival plans embodying these divergent ideas were presented. These were known as the Paterson plan and the Randolph plan. The former proposed a Congress with the states equally represented; the second proposed that each state should be represented according to its population. The convention nearly came to grief on this issue.

The tradition of unity conquers. In the end the convention agreed upon a compromise (known as the Connecticut Compromise, or the First Great Compromise), which provided that the new Congress should have two chambers, one (a Senate) representing the states equally and the other (a House of Representatives) representing them according to their respective populations. That is the basis we retain to-day. Various other compromises had to be made before the convention could agree upon the main points. For example, the method of electing the President was a compromise between a few who wanted the chief executive elected by the people and others who

desired that he be chosen by Congress. There were differences of opinion between the free states and slave states, between the commercial and agricultural regions, between the delegates from the seacoast towns and those from the hinterland. But we should not look upon the Constitution as a document made up entirely of compromises. Many important things were agreed upon unanimously. On most matters, indeed, there was no great difference of opinion, although much discussion was carried on before the delegates discovered their similarity of views.

The first draft. Over and over again the convention decided upon things provisionally, and then, a few days later, changed its mind. It had a great many matters of detail to settle. It was well that the delegates met behind closed doors, for if their differences of opinion had been known to the country, all confidence in their work would have been lost. At any rate, by the end of August the chief issues were settled. The rough draft of the Constitution was then referred to a special committee with instruction to put it into orderly form and improve its style. This done, it was adopted and signed by thirty-nine delegates. Of the rest, some were absent and some refused their signatures. Finally, the Constitution was sent to the Congress of the Confederation with the request that it be submitted to the thirteen states for ratification.

The chief objections to it. The Congress of the Confederation complied with this request, and much criticism of the new Constitution at once began to pour forth. Some objectors complained that it gave the central government too much power; others felt that it did not give enough. There was widespread disappointment that the new Constitution contained no bill of rights; that is, no series of



Photo by Ewing Galloway, N. Y.

SIGNING THE NATION'S FUNDAMENTAL LAW

From Albert Herter's "Signing of the Constitution" in the state capitol, Madison, Wisconsin

provisions guaranteeing personal liberties such as freedom of speech and freedom of worship. In the smaller states there was a feeling that the larger ones, like Virginia and New York, would dominate the new union; while the larger states grumbled because the small states had been given equal representation in the Senate. The new Constitution was blamed by some for giving the Federal government the right to issue paper money and by others for taking that power away from the states. Clergymen criticized it because there was no mention of Divine Providence, and many good people were aggrieved because it contained a compromise with slavery. All over the country there were faultfinders, and among them were some influential leaders of opinion in their respective states.

The fight for ratification. The new Constitution contained a provision that it should go into effect whenever nine of the thirteen states should have ratified it by conventions called for the purpose. It was not submitted to a ~~popular vote~~. Nor was it to be ratified by the state legislatures. The state legislatures were requested to have the people elect delegates to a convention in each state; these conventions were to discuss the Constitution, hear the arguments for and against it, and then vote to ratify or reject it. The conventions began to assemble and some of them ratified the Constitution without delay. That was what happened in Pennsylvania and Delaware. Others, including Virginia and Massachusetts, were slower about it. Still, it soon became probable that the minimum number of nine states would act favorably. New York, however, loomed up as a critical area. She was the biggest of the states and in many ways the most important. Moreover, New York lay right across the country, separating New

England from the rest. Four states were north of her and eight south; hence no union could be solid without New York. If she declined to ratify the Constitution, it would nevertheless go into force but the nation would be cut in two. Popular feeling in New York was running strongly against adopting the Constitution, and for a time it seemed likely that the state convention would vote to reject it.

The campaign of education. At this point, Alexander Hamilton, John Jay, and James Madison began a campaign of education by writing letters to the New York newspapers explaining the new Constitution, clause by clause, and defending it against the various criticisms. This was our first great campaign of political education using the newspapers as a medium. The writers pointed out that the Constitution would not make the national government too strong, and that a large amount of authority was still left to the states. They explained the difficulties that the convention had to overcome and pointed out that if this constitution were rejected, it might be a long time before the country would have a chance to adopt another. It was a choice between a constitution and chaos. These letters of Hamilton, Madison, and Jay were collected into a volume known as *The Federalist*, which still remains the best explanation and defence of the Constitution ever published. Their arguments impressed the members of the New York convention, and by the narrow margin of three votes it was voted to accept the Constitution.

How the people felt about it. If the Constitution had been submitted to a direct vote of the people, would it have been adopted? One cannot say with certainty, but there is every reason to think that it would have been rejected. The rank and file of the people were not enthusi-

astic; they did not understand the situation. They would probably have been swayed by sentiment, by the dislike of a supergovernment. They would not have weighed the arguments on both sides, as the state conventions did. The members of these conventions, moreover, were drawn for the most part from the well-to-do elements of the population. They had some vision of what the Union might do for the prosperity of the nation and especially for the towns which were growing up along the Atlantic seaboard. The opposition came mainly (but not altogether) from the farmers and workers of the interior who formed a numerous class but were not so influential as the large landowners and the people of the towns. In general the Constitution had brains and wealth on its side.

Was the adoption of the Constitution the work of the money power? For this reason it is sometimes said that the Constitution was framed and ratified by the money power; in other words, by the influence of bondholders, large landowners, merchants, shipowners, and well-to-do townsmen. These, although a minority of the people, managed to put it through despite the opposition from the unorganized farmers, workers, and frontiersmen. That statement is in part true, in part false. It is true that wealth and education were mobilized on the side of the Constitution, but they could not have carried it through alone. They were aided by a widespread feeling, outside their own ranks, that something had to be done, or the fruits of independence would be lost. It was quite natural, moreover, that the leaders in a movement of this sort should be men who had made a success of their own affairs. The same was true of those who signed the Declaration of Independence. The Constitution was ratified because it

appealed to people of intelligence who were willing to recognize the facts and were not controlled by their prejudices.

Inauguration of the new government. At any rate, nine states had ratified by the summer of 1788; the others dropped in, one by one. The old Congress of the Confederation, which had prolonged its lingering existence through all these turmoils, simply marking time, now issued a call to the states to choose their presidential electors, their senators, and their representatives as provided in the Constitution. Then it went out of existence. At its last meeting it did not have a quorum present. It simply faded away. Ten of the states responded by choosing electors and these electors chose Washington to be the first President of the United States. He was inaugurated in New York City on April 30, 1789. New York had been designated as the temporary location of the national capital until a permanent capital could be agreed upon. Senators and representatives from ten states were on hand to form the first Congress. Thus the Republic started on its course.

How the Constitution has developed. But the story of the Constitution does not end with the inauguration of the new national government. It was intended to be a flexible document, capable of expanding with the growth of the country, and it has been greatly expanded during the past hundred and forty years. Had not this growth been possible, the Constitution would have long since proved inadequate to the nation's needs. So the Constitution of to-day is not what it originally was. It has been changed by formal amendment, but to an even greater degree it has been distended by judicial decisions. The Supreme

Court has stretched its words and phrases, year after year, until they now mean far more than they did a hundred and forty years ago. Various usages, moreover, have grown up and these have affected the workings of the Constitution—for example, the custom of requiring congressmen to be residents of the districts which elect them. Again, the development of the party system has greatly affected the methods of government as originally established, for its framers did not anticipate that there would be political parties and national conventions. Hence we have to-day an unwritten as well as a written Constitution. This development of the unwritten constitution will be explained in the paragraphs following the next two.

The amendments. To begin with, nineteen amendments have been added to the original Constitution. The first ten are known as the Bill of Rights; that is, they are amendments dealing with such fundamental rights as the right to free speech, freedom of worship, freedom of the press, freedom from wrongful imprisonment, and so forth. These first ten amendments were adopted, all at once, almost immediately after the Constitution went into force.¹ The other nine amendments have been adopted at various times and deal with a variety of matters, including the method of electing the President, the abolition of slavery, national prohibition, and woman suffrage. At least a hundred other amendments have been proposed from time to time but not adopted. The Constitution provides four alternative ways of adding amendments; but only one of these ways has ever been used, for all the existing amend-

¹Provisions constituting a bill of rights were omitted from the original Constitution because of a feeling that they were not necessary in a republican constitution; but the omission was criticized in many quarters, and the leaders of the campaign for the adoption of the Constitution promised that if the states would accept it in its original form, they would support amendments to remedy the omission.

ments were initiated by Congress and ratified by the legislatures in three fourths of the states. The methods of amendment may best be learned by reading the provision itself. Turn to the Constitution, Article V.

Is the method of amendment too difficult? Four methods were provided because the framers of the Constitution wanted to make the process of amendment easy. Nevertheless there are many who now think that it is altogether too difficult. Three fourths of the states, at the outset, meant ten. To-day it means thirty-six. As a practical matter, an amendment must first be passed by a two-thirds vote in both houses of Congress. It does not need the President's signature. Then it goes to the states and thirty-six or more of them must ratify it before the amendment can go into effect. The critics of the present system point out the difficulty of getting so many states to agree on any proposal, however meritorious it may be. Still, as has been proved several times during the past twenty years, the difficulties are not insuperable when the people want something done. The prohibition amendment, for example, was ratified by forty-five states (nine more than was necessary) in less than half the time that Congress allowed for its ratification. The woman suffrage amendment also went through in quick time. A constitution should not be too easily amendable. It should not be amended unless there is a widespread popular demand. On the other hand, we should be reluctant to be debarred from making changes when there is serious need. The Constitution should keep pace with each new era.

Development by judicial interpretation. But there are other ways of changing the Constitution besides the process of formal amendment. Judicial interpretation is the

most important of these ways. It is the function of the courts to interpret the words of the Constitution and to decide whether they apply to particular cases. In doing so, they often give new meaning to old words and phrases, thus expanding their scope. Take the word "commerce," for example. In 1787 this term referred to sailing vessels and stage coaches. To-day, after the Supreme Court has been interpreting it for more than a hundred years, it includes steamboats, railroads, trolley lines, motor busses, airplanes, oil pipe lines, telegraphs, telephones, and a host of other things as carriers of commerce. The makers of the Constitution could not have intended to give Congress the right to regulate freight rates on the great trunk-line railroads, for there were no railroads in their day, but Congress has built up its power through a long line of Supreme Court decisions which have gradually expanded the meaning of the written words.

Development of the Constitution by usage. The Constitution has also grown by custom or usage. Usage is merely a general habit, long continued. The authorities at Washington begin doing something in a certain way. This becomes the customary way, year after year, until everybody becomes thoroughly used to it. Then it is difficult to change, as all long-standing habits are. For example, the Constitution provides that "in case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve upon the Vice President." It does not say that the Vice President shall become President, but merely that the powers and duties (not the title) shall devolve upon him. But by usage the Vice President takes the title of President when he assumes the

President's powers. Or, to cite another illustration, the Constitution provides that the President shall make certain appointments with "the advice and consent of the Senate." But by custom the Senate's advice is never asked, and by custom its consent is in some cases never refused. The Senate never declines to confirm the appointment of one of its own members, or former members, to an administrative post. The President's cabinet also rests on usage; it is not mentioned in the Constitution.

Development by statute. Finally, the Constitution has been developed by law. In many instances its framers merely laid down general principles, leaving the details to be arranged by Congress or by the state legislatures. For example, they did not stipulate who should have the right to vote as congressional electors. With certain restrictions they left the suffrage in national elections to be settled by each state for itself. So with the Federal courts. The Constitution provides that the judicial power of the United States shall be vested in a Supreme Court and "in such inferior courts as Congress may from time to time ordain and establish." The whole system of Federal courts, therefore, (with the single exception of the Supreme Court) rests upon laws or acts of Congress and not upon the Constitution.

In a word, the Constitution is not a rigid document that has come down to us from the Fathers. It is a living, growing, expanding thing. It is kept in touch with the conditions of each succeeding age by agencies of growth which those who framed it provided. They worded its provisions in broad language; they left details to be filled in by law; they authorized the establishment of a Supreme Court which assumed the function of judicial interpretation; they provided four methods of formal amendment;

and they trusted "time and circumstance" to do the rest. Without these agencies of development the Constitution would long since have failed to meet the country's needs. The ~~written document~~ remains much as it was; but the unwritten constitution keeps expanding year by year. And it will doubtless keep on developing with the growth of the nation. Our business is to see that it develops in the right direction.

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QUESTIONS ON THE TEXT

1. Where are the roots of the Constitution?
2. What attempts were made to form an American union prior to 1787? How did these attempts turn out?
3. When did the Constitutional Convention meet? Where? How many delegates did each state send? How were they chosen?
4. Who were the leaders? What other men had a part in the work? Into what types may they be grouped? Were all classes of the population represented? Who were some of the prominent absentees?
5. What were the Randolph and Paterson plans? How was a compromise effected?
6. What other compromises were made? Were there too many compromises?

7. Name some of the objections raised against the Constitution when it was made public.

8. What was *The Federalist*? Who wrote it? How? Why?

9. Was the adoption of the Constitution the work of a minority among the people? Explain.

10. What is meant by the "flexibility" of the Constitution? Explain the four ways of amending it. Is the process of amendment too difficult?

11. Show how the Constitution has been developed by usage and by judicial interpretation. Give examples.

12. Have we an "unwritten constitution" as in Great Britain? Justify your answer.

EXERCISE

The Constitution and the Articles

1. The Articles of Confederation provided no executive department to enforce the laws. This was remedied in the Constitution by providing.....

2. The Articles of Confederation provided no judiciary to interpret and apply the laws. This was remedied in the Constitution by providing.....

3. The Articles of Confederation established a Congress of one chamber. This was changed in the Constitution by providing.....

4. The Articles of Confederation required that amendments be ratified by all the states. This was remedied in the Constitution by providing.....

5. The Articles of Confederation vested the regulation of commerce in the states. This was remedied in the Constitution by providing.....

6. The Articles of Confederation gave the small states with few inhabitants the same voting power in Congress as the large states. This was remedied in the Constitution by providing.....

7. The Articles of Confederation assumed that the Congress

would call on the states when it needed revenue. This was remedied in the Constitution by providing that.....

8. The Articles of Confederation permitted the central government to act on the individual citizen only through his state. This was remedied in the Constitution by providing.....

QUOTATIONS FOR COMMENT

1. Any government, no matter how scientifically constructed, must demonstrate beyond question its power to command respect abroad, its power to command respect at home, and finally its power to build up national consciousness.—*D. C. Bailey.*

Has the United States government done all this? Does it command enough respect at home? Did the Civil War increase our national consciousness? Has immigration been a barrier to its growth?

2. A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of a people constituting a government.—*Thomas Paine.*

3. A republican government in a hundred points is weaker than an autocratic government; but in this one point, it is the strongest that ever existed—it has educated a race of men that are men.—*Henry Ward Beecher.*

TOPICS FOR ESSAYS

1. The Defects of the Articles of Confederation. 2. The Constitutional Convention of 1787. 3. Washington and the Constitution. 4. Jefferson and the Constitution. 5. The Federalist Letters. 6. The Compromises of the Constitution. 7. Bills of Rights in History. 8. The Democratic Tendencies of the Time as Expressed in the Constitution. 9. Alexander Hamilton and His Plan for a Constitution. 10. Benjamin Franklin at the Constitutional Convention. 11. James Madison as the "Father of the Constitution." 12. How the Constitution was Ratified. 13. The Supreme Court as a Constitution-Maker. 14. Usages of the Constitution.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the United States Constitution is too difficult of amendment and that ratification of amendments should be made possible by two thirds of the states.
2. That compulsory education is an essential factor in the preservation of democracy.

CHAPTER V

HOW THE PEOPLE CONTROL THEIR GOVERNMENT

PUBLIC OPINION, SUFFRAGE, NOMINATIONS AND ELECTIONS

1. "Public opinion is a manufactured product. It is created by hard work and the spending of money on somebody's part. The men who hire space in the newspapers and who form organizations to promote some movement—they are the ones who mould public opinion. You can sell ideas to the people in the same way that you sell merchandise, by vigorous advertising." Do you agree with the foregoing statement?
2. The objection to the convention system of making nominations is that it lends itself too easily to boss domination. The delegates are too likely to be controlled by a few practical politicians. The objection to the primary system of making nominations is that it fails to provide political leadership. It assumes that members of each political party will go to the primary and wisely choose the nominees by using their own individual judgment. Is there any way of avoiding the defects of both systems?
3. At a presidential election the party which wins a state by even the narrowest margin takes the entire slate of presidential electors, while the minority party gets none. How would you correct this situation?

The two main channels of popular control. In a democracy the government is assumed to be at all times under the control of the people. How is this control exercised? How does the individual citizen participate in government and keep it responsible to him? There are two principal ways in which he does this: first, by helping to form public opinion; second, by exercising his right of suffrage.

By expressing his opinions he exerts an indirect influence on government; by voting he exercises a direct influence on it.

Public opinion. A popular government, as its name implies, is one that tries to do what the people want it to do. These wishes of the people are supposed to make themselves known through public opinion. But what is public opinion? Whenever the government proceeds to deal with any important question, all sorts of opinions are expressed as to the best way of doing it. Some newspapers and some leaders urge one method; others oppose this and argue for a different way. Take the problem of enforcing the Eighteenth Amendment for example. The Anti-Saloon League and those who agree with it urge all the states to pass drastic enforcement laws and to coöperate with the national government in vigorously applying these laws. Other organizations and their followers believe that each state should use its own discretion in supplementing the work of the national government. A few groups desire the repeal of the prohibition amendment; others desire it modified; while still others want it left as it is and enforced to the letter. Thus we have a great variety of opinion on this and on every other important issue; but in time one side gains more converts than the other and its opinion becomes strong enough to be designated as public opinion. As a rule public opinion is the opinion of the majority; but not always, for a strong-willed, aggressive minority may sometimes outweigh a less active majority in determining what appears to be the public sentiment.

How public opinion develops. Public opinion is not usually permitted to form itself without assistance. It is guided, encouraged, and influenced from various quarters.

Very often it is, in large measure, the result of propaganda which has been organized by groups of people who have their own ends to serve. The newspapers, naturally, exert a considerable influence upon the moulding of public opinion, and so do organizations of various sorts, such as chambers of commerce, civic leagues, women's clubs, and labor unions. In other words, public opinion is not a spontaneous affair, but to a large extent it is a manufactured product. Most people do not create ideas of their own. They take ideas, all ready made, from somebody else. It is much easier for the average man or woman to do that. They follow the leadership of some statesman or newspaper or organization—or, in many cases, they go with the crowd.

It must be guided and directed. All this is necessarily the case, because public problems have now become very complicated. A hundred years ago, when life was simpler, people could make up their own minds on general questions of government without assistance. The great issues were plain—slavery or no slavery, protection or free trade, property qualifications for voting or manhood suffrage. But to-day the problems of government in nation, state, and city have become far more numerous and more difficult to understand. How can the average man make up his mind about how much self-government the Filipinos ought to have, or whether the railroads ought to be consolidated, or what should be done with Muscle Shoals, or whether the system of Federal reserve banks is working well? All these questions are of a technical sort, involving matters which even well-educated people find it hard to comprehend. So with various issues in state and local government. Is an income tax better than a tax on personal property? For how long should a street railway

franchise be granted? Or, to take another illustration, how should a city be zoned, that is, divided into residential, mercantile, and industrial sections? To form an intelligent opinion on that subject requires not only a knowledge of the community, but an acquaintance with the principles of city planning as well.

Conservative and radical attitudes. In general, most people are inclined to look upon all such questions from a conservative or from a radical point of view, although some are not inclined to either side. It is largely a matter of temperament and training. Some people are satisfied with government as it is; they believe in letting well enough alone, and hence they tend to react against any proposed change merely because it means something new. Others are continually pressing for changes in government; they look favorably upon new political experiments as a means of progress. Between these two extremes there are people who desire to keep going forward, but cautiously. They follow the poet's advice:

Be not the first by whom the new are tried,
Nor yet the last to lay the old aside.

It is not desirable that public opinion should be controlled for any considerable length of time by either conservatives or radicals. The soundest public opinion is that which is formed by a slow and steady growth, without running too strongly either way. In order to make progress in government, we must have change, but it should come by orderly and well-considered steps.

Who are influential in moulding public opinion? As respects their influence upon public opinion, the people of any community may be divided into three classes. *First*

Of all, and most influential, are those who occupy positions of leadership, such as men in public office, editors of newspapers, and other citizens who by reason of their wide acquaintance are able to get the ear of the people when they express their opinions. These men and women do not form more than five per cent of the population, but they have a large share in directing the public sentiment. *Second*, there is a much larger group of citizens, men and women, who neither occupy public offices nor actively undertake the functions of leadership, but who are intelligent, keep themselves well informed, read the newspapers with discrimination, and think for themselves. In the average community perhaps twenty per cent of the people fall into this class. They do not believe all they hear or all they read. They have an influence with their friends and acquaintances because they are thoughtful and fair-minded. *Finally*, we have a still larger body of citizens who take no real interest in matters of government. They are absorbed in their own affairs. They skip the political columns in the newspapers and read the sporting page or the stock market quotations, or spend a half hour on the comic strips. Their interest in politics is never aroused until election day approaches, and even then they do not become excited. Hence they know very little about the issues except what they happen to see in the headlines. As a rule they are swayed by their prejudices rather than by the merits of the candidates or the issues. Many of them do not take the trouble to vote at either the primary or the election. The influence of this class upon public opinion is small, and it deserves to be.

It would be too much to say that every young citizen should look forward to a place in the first of these three

classes. Only a small proportion of the people can hope to hold public office or to achieve other positions of commanding leadership. But there is room for everyone in the second group; that is, in the class of citizens who keep themselves informed about public questions and thus help to make public opinion intelligent.

Popular rule through the ballot. The control which people exercise over their government through public opinion is indirect and often works slowly. Control through the exercise of the suffrage is more direct, more definite, and produces results more quickly. It is through the suffrage, therefore, that the people possess and exercise their sovereign authority. They can change both the legislative and executive branches of the government by their action at the polls. To-day we have universal suffrage in the United States, with nearly fifty million people qualified to vote; but it was not always so. Universal suffrage is the result of an agitation that went on for many years before it finally met success.

The history of the suffrage. The history of the suffrage in America is a long and not a very interesting story. During the colonial period voting was regarded as a privilege rather than a right. In virtually all the colonies property qualifications for voting were established. Nor was manhood suffrage an immediate result of the Revolution, although there is a widespread impression to the contrary. The Declaration of Independence asserted the natural right of all men to govern themselves, but only one of the thirteen newly independent states proceeded to put that doctrine into practice. In all the rest the privilege of voting was restricted to adult male property owners and taxpayers. With the adoption of the national Consti-

tion, however, the reaction against property qualifications began and one by one the various states abolished their restrictions on the suffrage. By the middle of the nineteenth century the principle of manhood suffrage had become firmly established so far as the white population was concerned.

Negro suffrage. Then came the Civil War. In all the Southern states prior to this civil conflict the laws excluded colored men from voting; but with the emancipation of the slaves by President Lincoln the question of guaranteeing the suffrage to colored men became a pressing one. By the terms of the Fourteenth and Fifteenth Amendments no state is permitted to withhold voting rights from any man on account of his color; if it does so, the Constitution provides that such state shall have its number of representatives in Congress reduced. By various devices, however, the Southern states have been able to exclude negroes from voting despite these constitutional provisions. One of these devices is the requirement that all voters shall be able to read and write, but that this requirement may be waived in the case of any voter who can give an intelligent explanation of his state government without being able to read. Under this provision white men who are illiterate can be passed by the registrars of voters, while illiterate negroes are excluded. Another device is to exclude all colored citizens from the party conventions or party primaries. Inasmuch as the Southern states are normally Democratic, the elections are virtually decided at the conventions or primaries of that party. Hence, even if the negro is permitted to vote at the final election, he has no real part in the actual selection of his public officials. In general, therefore, while the Constitution guarantees negroes

the right to vote in the Southern states, the fact is that very few of them do vote or play any important part in Southern politics. Congress has the right to reduce the representation of the Southern states in the House of Representatives by reason of this situation, but has never ventured to do so.

Woman suffrage. It is now nearly one hundred years since women first began to claim, in the United States, the right to equal political privileges with men. But it was not until 1869 that they actually obtained this privilege in any part of the country. In that year the territory of Wyoming established full woman suffrage and this privilege was continued when Wyoming became a state. Other states followed the example and before the World War woman suffrage had been established in about a dozen states. The leaders of the woman suffrage movement, however, lost patience with this slow process of winning the states one by one and undertook to secure votes for women on a nation-wide scale by means of an amendment to the national Constitution. Congress responded to their pressure in 1919 and sent to the states a proposal which was quickly ratified and has been attached to the Constitution as the Nineteenth Amendment.

Present qualifications for voters. Very few people appreciate the fact that Congress does not decide who shall have the right to vote even at national elections. Each state has entire freedom to determine who shall be placed on the voters' list, subject only to the restriction that no one shall be shut out by reason of sex, race, color, or previous condition of servitude. Inasmuch as each state decides the matter for itself, there is no reason why qualifications for voting should be the same in all parts of the

country, and as a matter of fact they differ somewhat from state to state. At present the restrictions relate mainly to age, citizenship and residence, but sometimes also to tax-paying and ability to read and write. In every state the privilege of voting is restricted to persons who are twenty-one years of age, or who will be twenty-one years of age at the next election. It is also restricted to those who have resided in the state for a designated period, usually six months or a year. Citizenship is required in all the states but one, and in this exceptional case it is necessary that the noncitizen voter shall have formally declared his intention to become a citizen.

Who are citizens? This raises the question as to who are citizens of the United States. Most Americans are citizens by birth, for the Constitution provides that all persons born in the United States and subject to the jurisdiction thereof shall be deemed citizens. It should be pointed out, however, that a person may be born on American soil and yet not be an American citizen by birth; for example, the children of a foreign ambassador stationed in Washington. This is because such persons are not deemed to be "subject to the jurisdiction" of the United States. According to the rules of international law, the embassy of a foreign country is immune, in many ways, from the jurisdiction of the country in which it is situated. On the other hand, a person may be an American citizen by birth although not born within the boundaries of the United States; for example, children born to an American ambassador abroad, or children of American parents born on a vessel at sea, or, indeed, the children of American parents temporarily residing abroad. All such cases, however, are exceptional. Most citizens by birth are born within the

four corners of the United States, or in Alaska, Hawaii, or Porto Rico. Persons born in the Philippine Islands, unless of American parents, are not American citizens because Congress has not yet accorded them that status. Filipinos are "nationals" of the United States—not citizens. This means that they are entitled to American protection but do not have all the other rights and privileges of citizens.

Citizens by naturalization. The other method of acquiring citizenship is by naturalization. A foreign-born person who comes to the United States may become a naturalized citizen by renouncing his former allegiance and assuming the new one. This he does in a formal manner prescribed by law. But not all foreign-born persons are eligible to be naturalized. The laws of the United States extend this privilege only to white persons and to persons of African nativity or descent. Hence Chinese and Japanese are excluded from becoming naturalized American citizens. But a child born in the United States, even though both his parents be Chinese or Japanese, is an American citizen by birth and does not need to become naturalized.

How an alien becomes naturalized. To become a citizen by naturalization, one must go through the legal formalities. First of all, the foreigner, after coming to this country, must file a declaration of his intention to become a citizen. This he may do in any court of record at any time after his arrival. When he files this petition, the court gives him his *first papers*, as they are called. Then, when he has resided in the United States for at least five years continuously, he is entitled to apply for his *final papers* or letters of citizenship. Not less than two nor more than seven years must elapse, however, between these

two steps in the process of naturalization. At the time of obtaining final papers, moreover, the applicant must produce two witnesses, both of them already citizens, who will swear to the fact of his actual five-years' residence and to his good character. He must also show that he is able to read and write, that he has some knowledge of American institutions, and that he is not a disbeliever in organized government. The applicant is supposed to do all this himself, but as a rule some agent of a political party assists him in making out his petition, finding the two witnesses, and getting him coached for the questions on American institutions. The final papers, or letters of citizenship, can be granted by any court which has been designated for this purpose.

The wife and children of a naturalized citizen. The naturalization of a father makes citizens of all his children, both sons and daughters, who are under twenty-one years of age at the time the final papers are granted. But it does not bestow citizenship upon children who are over age. Until a few years ago it was the rule that an American woman who married an alien lost her American citizenship; while on the other hand, a foreign woman who married an American citizen thereby acquired American citizenship. But Congress in 1922 changed this rule, and American citizenship is no longer either acquired or lost by marriage. A woman who marries a foreigner may now retain or give up her citizenship as she prefers. This change in the law has caused much confusion. The naturalization of a foreigner confers American citizenship on his wife if he is married at the time of his naturalization.

Collective naturalization. Occasionally we have what is called collective naturalization; that is, the admission of

a large body of people to citizenship by treaty, or by an act of Congress. When Louisiana (1803), Florida (1819), and Alaska (1867) were acquired by the United States, the treaty of acquisition provided in each case that the inhabitants would be admitted to American citizenship.¹ But the treaty of 1898, by which we acquired Porto Rico and the Philippines, contained no such provision. In 1917, however, Congress by statute admitted the Porto Ricans to citizenship. The Filipinos have not yet been given that status. Hence they are not entitled to all the "privileges and immunities of citizens" as established by the Constitution of the United States.

Dual citizenship. Can anyone be a citizen of two countries at once? Until about twenty years ago, double citizenship was common. Some European nations maintained that emigrants who went to the United States and became naturalized there, were still citizens of their respective native countries. The courts of the United States also maintained the doctrine that an American citizen, although becoming naturalized abroad, remained an American citizen. But all this has now been changed. In 1907 Congress enacted a law which provides that any American citizen may divest himself of his citizenship by becoming naturalized in another country, or by returning to his native country and becoming a permanent resident there within five years after his naturalization in the United States. In addition, the United States has made treaties with various European countries providing that emigrants who become naturalized in the United States shall be deemed to have lost their original citizenship. These treaties usually pro-

¹In the case of Hawaii, the act of Congress which established a civil government there (1900) gave citizenship to the inhabitants.

vide, however, that if a naturalized American citizen goes back to the country of his origin and remains there a certain length of time, he shall become liable to all the obligations of citizens there; for example, to compulsory service in the army in countries where that form of service exists.

Persons without citizenship. It is quite possible for a person to be a citizen of no country at all. This is the case during the interval between the filing of first papers in the United States and the applicant's final admission to citizenship. In filing his first papers an alien renounces his foreign citizenship, but he cannot become a full-fledged American citizen for at least two years thereafter. Meanwhile he is literally "a man without a country." But the matter is not one of much real importance. If he goes abroad he ranks as a "national" of the United States and can obtain a special form of American passport or travel permit. He has the full protection of the American courts at home.

The citizenship of corporations. Is a corporation a citizen? In legal documents the Standard Oil Company of New Jersey is designated as a citizen of New Jersey, although it does business in several states. A corporation, for various legal purposes, is deemed to be a citizen of the state from which it has received its charter. For example, the national Constitution provides that "controversies between citizens of different states" may be heard by the Federal courts. Corporations which have been chartered in different states, therefore, sue one another in the Federal courts—provided the other legal requirements as to Federal jurisdiction are fulfilled. But a corporation is not a citizen in the sense that it is entitled to all the privileges and

immunities of an American citizen as set forth in the Constitution. The right to do business as a corporation is a special privilege conferred by the state laws and such privilege may be subjected to various restrictions which cannot be applied to individual citizens.

Other qualifications for the suffrage. In addition to age, residence, and citizenship a few states require that all male applicants for registration as voters shall have paid taxes, at least a poll tax, or shall have been assessed as taxpayers. About one third of the states maintain some form of educational qualifications for voting. The usual requirement is that anyone who desires to be enrolled as a voter shall be able to write his name and also to read aloud a clause taken at random from the state constitution. New York State maintains a reading and writing test, which is in reality a mild form of intelligence test. The person who registers for the first time must not only read a paragraph of simple English, but he must be able to answer various questions based on what is in the paragraph.

Are educational tests for voting desirable? Would it be well to insist on an elementary educational qualification everywhere, or is it desirable that no distinction be made between those who can read and those who cannot? In view of the New York requirements this question has been vigorously argued during the past few years. On the one side it is contended that men and women who have never had the advantages of a grammar school education may nevertheless be good citizens and well-informed on questions of politics—better informed, indeed, than some who are college graduates. People are not required to read and write before being compelled to pay taxes. Men who

could neither read nor write were drafted to serve in the army during the War. Why, it is asked, should we compel men and women to perform civic duties and not give them civic rights? On the other side of this question it is argued that since we provide free elementary education for everyone in the country and require everyone to attend school up to a certain age, it is not unreasonable to insist on an elementary test for voting. Persons who are unable to read a ballot cannot mark it intelligently, especially when various questions are submitted to the voters on the ballot, as is now the case in many states.

How voters are registered. In order to vote it is first necessary to be registered. In every community there is a voters' list or register of voters. These lists are compiled by some public official, such as the city clerk or the inspectors of elections, or registrars of voters, as they are variously called. Whoever desires to be enrolled as a voter must appear before these officials and make a sworn statement as to age, citizenship, residence, and other qualifications. If there is an educational test, it is applied at this time. On a certain date, in advance of election day, the list is declared closed and thereafter no names can be added. In some states a new voters' list is compiled every year; in others a voter's name is kept on the list as long as he continues to pay taxes, or until someone asks that it be stricken off. Various classes of people, although otherwise qualified, are debarred from voting on various grounds. Among these are insane persons, criminals, and those who have been convicted of some serious offence against the election laws. Temporary absence from a state does not cause a voter to lose his claim to legal residence.

Methods of nomination. The choice of elective public

officials necessitates two steps—nomination and election. In early days nominations were made by a caucus, in other words, by a gathering of the candidate's friends. Then, as population became larger, nominations were made by conventions of delegates. One political party called its convention and named its candidate; then the other did likewise. This convention system continued throughout the greater part of the nineteenth century, but it became strongly disliked because conventions were made up largely of professional politicians and were often controlled by political bosses. Accordingly, it was proposed that the nominations be made directly by the voters at a preliminary election or primary. This proposal found favor and in many of the states the nominations are now made by the new plan. A primary is in all respects an election with this exception, that it narrows the list of candidates and does not decide the final result. Its purpose is to eliminate those who have no chance to win. There are various types of primaries, the most common being the *closed primaries*. This means that none may vote at the primary except those that are members of a designated political party. In other words, all Republicans vote at the Republican primary and all Democrats at the Democrat primary. To save expense both primaries may be held on the same day with the same polling places, but with different ballots. In other states *open primaries* use a single ballot with all the political parties printed on it. Under this system the candidates who get the highest votes at the primary have their names placed on the ballot for the final election. In some cities a still different form, known as the *nonpartisan primary*, is used; that is to say, the primary ballot bears no party designations at all.

Merits and defects of the primary. The primary has an advantage over the old convention in that it places nominations directly in the hands of the voters and makes it more difficult for the party leaders to dictate who the candidates shall be. The primary cannot easily be manipulated by wire-pulling politicians. On the other hand, the use of the primary means a double election with a considerable increase in cost and spreads the campaign over a longer period. The primary election often takes place in September and the final election in November, thus necessitating a campaign of three or four months. To wage such a campaign takes so much time that busy men and women are often deterred from becoming candidates. Moreover, the primary contests are sometimes so bitter that they create dissension in the ranks of the party and weaken it in the ensuing election. Most serious among all the defects of the primary system is the fact that it requires the voters to make the nominations without any definite leadership or any official suggestions from the party organization. Moreover, it affords no means of framing the party platform. Accordingly, in some states it has become the practice to hold an informal convention some weeks before the date of the primary and this convention makes recommendations concerning the candidates whom the party leaders desire their followers to support. Voters are free, of course, to do as they please at the primary and to disregard these recommendations if they see fit, but the support of an informal convention naturally carries a good deal of weight.

How an election is held. The date on which an election is held is fixed by law. National elections always take place on Tuesday following the first Monday in November.

This roundabout way of fixing the election date is used in order to make certain that the polling will not take place on the first day of the month, a time when those who work in banks, offices, and other business establishments are particularly busy. State elections are usually, although not always, held on the same date as national elections. County and city elections usually take place on a different date. It is thought best that local elections shall not be held on the same day as the state or national voting because this separation helps to keep national politics out of local affairs.

The voting takes place at the polling places, one or more of which are located in each precinct. A precinct is a small division of the county, town, or city, and usually does not contain more than 500 or 600 voters. Each polling place (usually a room in a school, fire station, or private house) is in charge of certain officials known as poll wardens, or inspectors, assisted by one or more clerks. All are appointed by the state or local authorities. The duty of the polling officials is to give ballots to those whose names are on the voters' list, to put these ballots in the box after they have been marked, and to count the votes after the poll is closed. They are responsible for the orderly and honest conduct of the polling. Each political party is also allowed to have one or more watchers at every polling place and these watchers have the right to challenge any person whom they believe to be disqualified from voting. When so challenged an applicant for a ballot may take oath that he is entitled to vote, in which case he is given a ballot; but such ballots are counted separately.

The ballot. The earliest form of voting in the United States was open voting. The voter came to the polls and stated his choice aloud, and the poll officials wrote it down.

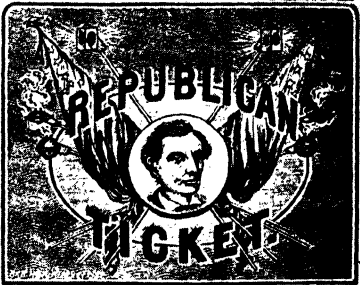
But this method made secret voting impossible and in due course paper ballots came into use, with each party providing ballots for its own members. Towards the close of the nineteenth century a still further improvement was made by the adoption of what is known as the Australian ballot. This is an official ballot printed by the public authorities; all ballots are alike. The voter marks a cross after his candidates, folds the ballot in such way that his pencil markings are not visible, and personally puts it in the box.

The short ballot. Where there are many offices to be filled at a single election, the ballot becomes a rather large sheet, sometimes two or three feet square. Ballots have been rendered longer by the practice of submitting questions to the voters under the arrangement known as the *initiative and referendum*. It is not uncommon to find ballots containing more than one hundred names and perhaps fifteen to twenty questions. Such ballots are quite bewildering to ordinary citizens; hence there has been a movement to shorten the ballot by reducing the number of elective positions. It is argued that only the most important public offices (such as those of president, senators, representatives, governors, assemblymen, mayors, etc.) should be chosen by popular vote, and that all others should be appointed. For example, it is urged that appointment is the better method of selecting state auditors, county clerks, superintendents of schools, city attorneys, and others whose duties are of a specialized character. The short ballot aims to make government more democratic by giving the people a fairer chance to determine the important questions.

Preferential voting. A ballot known as the preferential

ballot is in use in some American cities. Under this system the voters are not asked to mark a cross after the names of those candidates whom they favor, but are requested to indicate their first, second, third, and even their fourth choices among the various candidates. When such ballots are counted, the candidate who has a clear majority of first choices is declared elected; but if no candidate obtains such a majority, the second choices are added and if the two totals give what would be a majority of first-choice votes, the candidate who receives them is declared elected. In like manner the third choices are resorted to if necessary. The purpose of the preferential

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For Presidential Electors.
At Large. GEORGE MOREY, of Boston.
HEUBEN A. CHAPMAN, of Springfield.
Districts.

1-Alfred May, of Naticket.	6-John G. Whittier, of Amesbury.
2-James H. Mitchell, of East Bridgewater.	7-Gerry W. Cochrane, of Methuen.
3-John M. Forbes, of Milton.	8-John Newhall, of Lowell.
4-Charles B. Hall, of Boston.	9-Amasa Walker, of N. Brookfield.
5-Peleg W. Chandler, of Boston.	10-Charles Field, of Athol.
	11-Charles Matton, of Greenfield.

FOR GOVERNOR.
JOHN A. ANDREW,
Of Boston.

FOR LIUT.-GOVERNOR.
JOHN Z. GOODRICH,
Of Stockbridge.

For Secretary of the Commonwealth.
OLIVER WARNER, of Northampton.

For Treasurer and Receiver-General.
HENRY K. OLIVER, of Lawrence.

For Auditor.
LEVI REED, of Abington.

For Attorney-General.
DWIGHT FOSTER, of Wrentham.

For Representatives to Congress, all at Large.
ANSON HURLINGHAM, of Greenough.

For Congress, District 1.
JACOB SLEEPER, of Taunton.

For Congress, District 2.
FRANCIS F. CROWNSHIELD, of Taunton.

From the original in the author's collection of old ballots.

ONE OF THE OLD-STYLE BALLOTS THAT
ELECTED ABRAHAM LINCOLN IN 1860

ballot is to prevent the election of a candidate by a mere plurality when there are several in the field.

Proportional representation. A somewhat complicated system of voting and counting votes has been adopted by some large cities, notably Cleveland, Cincinnati, and Indianapolis, for the election of city councilmen. This system may be concisely explained as follows: First, the names of all candidates are printed on the ballot, not in lists or slates, but individually, in alphabetical order, or in rotation. The voter indicates his choices by marking the figure 1 after the name of his first choice, the figure 2 after the name of his second choice, and so on. Then, when the polls are closed, the election officials compute *the quota*; in other words, the minimum number of votes needed to elect a candidate. This they do by dividing the total number of valid votes cast by the number of places to be filled plus one, and taking as the quotient the next complete whole number. For example, let us suppose that 10,000 votes have been cast and that there are seven candidates to be elected. Ten thousand divided by eight (seven plus one) is 1250 and any candidate who receives 1251 (the quota) first-choice votes is declared elected. If such candidate, however, has more votes than enough to fill his quota, the surplus votes are distributed (in accordance with the indicated second choices) among candidates whose quotas have not been filled. If enough candidates are not elected by this process, the candidate with the smallest number of first choices is then dropped and his votes are distributed in the same way. This process of elimination and distribution goes on until enough candidates for each office have filled their quotas or until

the successive eliminations have left no more than enough to fill the vacant positions.

Corrupt practices at elections. All elections afford some opportunity for corrupt practices and various safeguards are provided against their occurrence. *Personation* is the offence of voting under a name which is not your own. Voters who have died since the lists were compiled, or who are absent, are sometimes impersonated by men who have no right to vote at all. Vigilance on the part of the election officers helps to prevent personation, although the officials can hardly be expected to know everyone who comes to the polls. *Repeating* is the offence of voting twice at the same election. To do this a voter must first, by fraudulent means, become enrolled as a voter in two or more precincts or districts. *Ballot-box stuffing* is the practice of putting into the box ballots which have no right to be there. With the Australian ballot the practice is very infrequent. *Ballot switching* is the placing of marks on the ballots, surreptitiously, while the ballots are being counted. A dishonest official, with a small piece of lead under his fingernail, has sometimes been able to spoil or to "switch" ballots by marking additional crosses on them during the process of counting. *Intimidation* is the offence of influencing a voter's action by threats or wrongful pressure. *Bribery*, of course, is self-explanatory. All these practices involve moral turpitude and are forbidden under severe penalties. They have now become relatively uncommon at American elections.

Absent voting. It frequently happens, in the nature of things, that many voters cannot conveniently be in their home districts on election day. Soldiers and sailors, com-

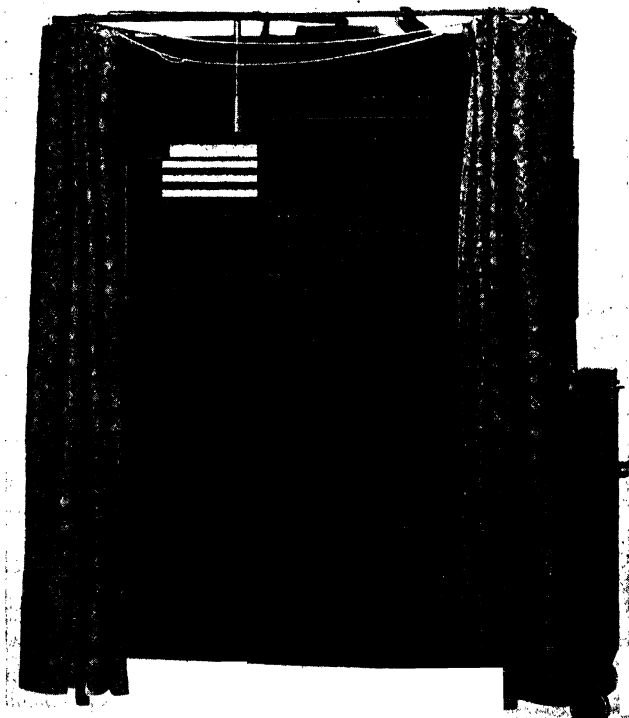
mercial travelers, railway conductors, engineers and trainmen, fishermen, and students in universities are obvious examples. It has been estimated that in Massachusetts the number of voters who are necessarily absent from their homes on election day averages about thirty thousand. Many others, in order to cast their ballots, are put to considerable expense and inconvenience. Now it has seemed desirable, in many of the states, to make some provision whereby these voters may cast their ballots without being actually at the polls on election day. The usual arrangement is that a voter who expects to be absent on election day must apply, some time before the election date, to a designated official for a ballot. This ballot is then marked by the voter and sealed in an envelope. The envelope is attested before a notary public and deposited with an election official who sees that it is counted when other ballots are counted. In some states the blank ballot is sent by mail to absent voters who request it, and after being marked the ballot is returned by mail before the election day. The chief objection to absent voting is that it gives an opportunity for fraud, but this objection has not been verified in practice.

Compulsory voting. Compulsory voting does not exist anywhere in the United States at the present time although it has been frequently proposed. Voting has been made compulsory, however, with legal penalties for failure to vote, in several foreign countries, notably in Belgium, in Spain, and in New Zealand. The usual procedure is to impose a fine upon every voter who, without good excuse, stays away from the polls on election day, or, for repeated absences, to strike his name off the voters' list altogether.

Compulsory voting rests upon the argument that, in a

democracy, the *right* to vote imposes a *duty* to vote. The citizen must serve on a jury in time of peace and in the army during war whether he likes these forms of public service or not. Why, then, should he be allowed to shirk his duty to vote, a duty which must be performed if democratic government is to survive? If one voter has the right to stay away from the polls, every other voter has the same right. And if all followed this policy, we could not maintain a "representative" form of government. But there is another side to the question. The voter who goes to the polls because he will be fined if he stays away will not cast his ballot with much discrimination, intelligence, or patriotism. Would the votes of such men be worth counting? Would they contribute anything to the cause of good government? Moreover, it has been demonstrated by foreign experience that while you can compel a voter to go to the polls and drop a ballot in the box, you cannot compel him to mark his ballot properly, for he marks it in secret. In one of the Swiss cities some years ago it was found that the chief result of compulsory voting was to induce many hundreds of reluctant voters to drop blank ballots in the box. It can well be argued that voting is a duty, but it is a duty which ought to be performed from motives of patriotism and not from dread of the penalties. Most citizens do not require compulsion, and it is questionable whether forcing others to vote would, in the long run, serve any useful purpose.

Voting by machine. In some cities of the United States the experiment of permitting the voter to record his choice by means of a voting machine has been tried with varying degrees of success. A voting machine is constructed upon much the same principles as a cash register. The keys



Courtesy Automatic Voting Machine Corporation

A VOTING MACHINE

bear the names of the various candidates and the voter merely steps behind a curtain where he presses one key after another just as he would mark crosses on a printed ballot. The mechanism is so arranged that a voter cannot press two keys which register for the same office. The voting machine plan has some distinct advantages in that it

does away entirely with the trouble and expense of printing ballots; it eliminates spoiled ballots, it precludes all chance of tampering with the votes, and it ensures an accurate count. On the other hand the machines are expensive both to install and to maintain, particularly when several machines are needed for each polling place. Moreover, like all other complicated mechanisms, they get out of order, and when they do this on election day it makes a bad mess of things. It is doubtful whether they will ever supplant the printed-ballot plan of voting.

Making democracy efficient. Frequent complaints are made that too many voters stay at home from the polls on election day. A presidential election creates nation-wide interest and brings out eighty per cent or more of the registered vote; but state and municipal elections do not usually excite the people to enthusiasm and the proportion frequently drops to sixty or even fifty per cent. What we call government by the people, therefore, is in many cases government by a minority of the people. The situation, moreover, seems to be getting worse instead of better. The proportion of stay-at-homes appears to be larger nowadays than it was a generation ago. Accordingly movements have been set afoot for stirring up the "slacker vote." Organizations make it their business to advertise the approach of an election by placards and a distribution of circulars, by sending post card notices to voters, by telephone calls on election day, by ringing the bells on election morning, etc. It is doubtful whether such artificial promotion of electoral interest does much good. The voter who knows and cares so little about the issues at an election that he will not vote unless shamed into doing so, is not likely to mark his ballot with much intelligence or discrimination.

The surest way to bring out the vote is to bring out the issues; likewise to have fewer elections and shorter ballots.

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QUESTIONS ON THE TEXT

1. When and how was manhood suffrage established in the United States?
2. What is the status of negro suffrage in the United States, legally and in practice?
3. Why was the Nineteenth Amendment adopted and what does it provide?
4. Explain the chief qualifications for voting at national and state elections.
5. How are the voters' lists made up?
6. Explain: closed primaries, open primaries, nonpartisan primaries. Has the primary system of nomination been a success?
7. What arrangements are made for balloting on election day? Should all elections be held on the same day, or should local elections be held at some other time than on the date of national and state elections?

8. What is the Australian ballot? What sort of ballot preceded it? What is the short ballot? The preferential ballot? A voting machine?

9. Explain the system of proportional representation.

10. Define personation, repeating, and intimidation at elections.

11. How do absent voters vote?

12. Do you believe in compulsory voting?

QUESTIONS FOR DISCUSSION

1. The laws of New York State provide for a "literacy test" to be given to all new voters. Here is the test given in 1928. Do you think it is too easy?

NEW YORK STATE REGENTS' LITERACY TEST

Read this and then write the answers. Read it as many times as you need to.

Decoration Day is May 30th. On that day the soldiers decorate the graves of those who fought for this country. They place flowers and a flag on the patriots' graves. In many states the day is a holiday. Another name given to this day is Memorial Day. Every year the day is celebrated in New York City by a great parade. Soldiers and sailors march in this parade. Bands of music play patriotic airs. Wounded men and those who are too old to walk are driven in cars. Great crowds gather in the streets to watch the parade, and many policemen guard the line of march to preserve order and prevent accidents.

(The answers to the following questions are to be taken from the above paragraph)

1. On what date is Decoration Day?.....

.....

2. What do the soldiers decorate on that day?.....

.....

3. What is another name for Decoration Day?.....

.....

4. How does New York City celebrate the day?.....
.....
5. Who march in the parade?.....
.....
6. What kind of airs do the bands play?.....
.....
7. What men are driven in cars?.....
.....
8. Why do so many policemen guard the line of march?.....
.....

2. Should proportional representation be used and primaries abolished altogether?

3. Should a limit be placed on campaign expenditures, each party or candidate being allowed to spend only so much per registered voter? Should each candidate be given an allowance out of the public treasury for legitimate campaign expenses?

TOPICS FOR ESSAYS

1. Newspapers and Public Opinion. 2. The Radio as an Agency of Propaganda. 3. Organizers of Public Opinion. 4. The Money Power in Politics. 5. Suffrage in Colonial Days. 6. Andrew Jackson and Manhood Suffrage. 7. The Fourteenth Amendment. 8. Landmarks in the History of Woman Suffrage. 9. Qualifications for Voting in European Countries. 10. How Nominations Are Made in England and France. 11. The Pre-Primary Convention. 12. Presidential Primaries. 13. The Australian Ballot. 14. Various Schemes of Proportional Representation. 15. How Compulsory Voting Has Worked Abroad. 16. Election Scandals and How to Prevent Them.

SUBJECTS FOR DEBATE

RESOLVED:

1. That intelligence tests for voting should be established in all the states and applied to all new voters who cannot produce a certificate of graduation from an elementary school.

2. That a poll tax of five dollars be imposed on every registered voter who, without good excuse, fails to vote at any regular election.

CHAPTER VI

POLITICAL PARTIES AND THEIR WORK

1. From your knowledge of history—ancient, mediaeval, or modern—can you point out any government in which the people took an important share without forming political parties?
2. The Democratic party claims Jefferson, Jackson, and Wilson as its three most conspicuous leaders. What did each contribute to the upbuilding of the party? Lincoln, Grant, and Roosevelt were Republican leaders. For what achievements is the Republican party indebted to them?
3. In the various countries of Continental Europe there are five, six, sometimes a dozen political parties. Every voter, no matter what his opinions, can usually find a party to suit him. In the United States, with only two major parties, men and women of differing opinions are frequently enrolled in the same party. In some European countries the government is carried on by combinations or *blocs* made up of two or more parties; in the United States a single party controls the administration. Which of these two plans do you prefer, and why?
4. The following things have to be done by the party organizations in the course of an election campaign. Put them (1) in their chronological order, and (2) in the order of their importance: (a) nominating the candidates, (b) getting aliens naturalized, (c) preparing and mailing campaign literature, (d) getting voters registered, (e) holding meetings and rallies, (f) bringing voters to the polls, (g) holding party conventions, (h) raising campaign funds.
5. The way to correct the evils of the party system is to: (a) abolish parties altogether, (b) have more parties, (c) make the mechanism of government simpler, (d) elect fewer officers and make the ballot shorter, (e) forbid the use of money in political campaigns, (f) do

away with the spoils system, (g) pay the cost of election campaigns out of the public treasury, (h) make voting compulsory. Which of these remedies are likely to prove the most effective?

The history of political parties. The men who framed the Constitution of the United States were not believers in party government. On the contrary they were anxious to provide a plan of government which would be free from partisan rivalries. Even after the Constitution went into force, moreover, the political leaders were strongly averse to party government in any form. Washington in his farewell address warned his people against "the dangers of parties in the state."

Nevertheless political parties soon came into existence; in fact they were already in existence before the Constitution was framed. The members of the Constitutional Convention, as anyone can prove by the way in which they voted on various questions, were virtually divided into two major political parties. From the very outset of their discussions they divided themselves into two broad groups; namely, those who wanted a strong union with large powers given to the central government, and those who desired that the predominance of authority should be left with the several states. The former were known as Federalists and the latter as Anti-Federalists. The compromises of the Constitution were necessitated by the rivalry of those two groups.

Hamilton and Jefferson. Immediately after the Constitution went into force, the breach between the two groups became wider. They found leaders in Alexander Hamilton and Thomas Jefferson respectively. Hamilton was a believer in centralization and desired to make the national government as strong as possible. He was also

an ally of the property interests and had strongly conservative tendencies. Jefferson, on the other hand, was a vigorous supporter of state rights, a friend of the farmer and frontiersman, with a strong tendency to liberalism in his political views. In Washington's first administration Hamilton was Secretary of the Treasury while Jefferson was Secretary of State, and these two notable leaders came frequently into conflict on questions of general policy. Washington, however, was not a party man and tried to steer an even course between both sides. To a large extent he succeeded, but in general he leaned somewhat towards the Federalists, especially during his first administration.

Political parties down to the Civil War. In due course there came a reaction against Hamilton's political views and Jefferson was made President at the election of 1800. The Anti-Federalists now became known as Democratic Republicans, or ultimately as Democrats. For this reason Jefferson is commonly looked upon as the founder of the Democratic party as it exists at the present day. A little later the old Federalist party disintegrated and an era of factional politics ensued, with the result that no candidate for the presidency could obtain an electoral majority in 1824. The selection of John Quincy Adams as President was made by the House of Representatives. But after a brief interval the various factions united again, one of them calling itself the Whig party and the other the Democratic party. Andrew Jackson belonged to the latter and greatly increased its strength throughout the country. After Jackson's time the issue of slavery came more and more to the front and in the end it split both parties asunder. During the middle fifties a new Re-

Republican party arose from the ruins of the old Whig organization and clinched its position by securing the election of Lincoln in 1860. Since the Civil War these two major parties, Republican and Democratic, have held the center of the stage, although minor parties have come into existence and exerted an influence from time to time.

Third parties. These minor parties do not usually last very long. Either they become major parties by crowding out one of the older organizations, or they go out of existence as separate parties after a while. The Republican party, after 1860, crowded out the Whigs. The Progressives, after 1916, became merged with the Republicans. The Populists, who flourished during the early nineties, went out of existence. On the other hand the Prohibition Party and the Socialist Party still remain as independent organizations and poll a considerable vote at every presidential election. Third parties have the advantage of being founded upon one outstanding issue and their platforms deal chiefly with this central question—prohibition, socialism, farm relief, or whatever it is. But when this issue ceases to be a live one the party is likely to lose much of its strength. The major parties have a varied program and do not center their attention on any one issue.

Why political parties exist. Every political party has two principal aims: first, to get control of the government, and, second, to use this control as a means of carrying out the party program as expressed in its platform. The platform is a document, drawn up by the leaders of each party, which sets forth the principles and policies for which the party stands. The national party plat-

forms are prepared every four years at the national party conventions which are held in June preceding the presidential election. State party platforms are framed by each party before each state election and deal with local issues. A party is supposed to be bound by the promises and pledges contained in its platform; but these pledges are often stated in such general terms that they can be evaded. If you compare the platforms of the two major parties at the last election you will find that on many issues they say almost the same thing in different words.

Why they organize. Now a party platform counts for little unless the party can get control of the government and thus be in a position to carry out its promises. To secure this control it must win the election, and to win the election it must organize. It must organize because the party with the strongest organization has a great advantage at the polls. An unorganized or poorly organized party is almost sure to be defeated. Good organization is the key to victory in politics. And it is not enough that the organization shall be in good order at election time; to be effective it must be maintained at full strength throughout the year. Elections are now held so frequently in the United States that party organizations must not be allowed to grow rusty between campaigns. Primaries and elections for national, state, and municipal government are held at such close intervals that the party officials and committees are kept continually at work. No sooner does one campaign finish than another one begins. Politics has become a profession. It provides work for a large number of professional politicians—men and women who are constantly organizing, electioneering, and working to make their own party

dominant in the nation, the states, the counties, and the cities.

National party organization. Each of the major parties has a national committee. It is made up of one member from each state. The national committee elects its own chairman and its treasurer. It makes the general plans for the campaign. Through subcommittees it raises the campaign funds, arranges for speaking tours by the candidates, and supervises the issue of campaign literature. Likewise it makes the arrangements for the national convention of the party, which is held in June preceding each presidential election. It serves as the general staff for the party.

How presidential candidates are nominated. The national convention is a great assembly. Each party holds its own. The Republican convention usually comes first and the Democratic convention a couple of weeks later. The national committee in each party chooses the city in which its own convention shall be held. But conventions are usually held in some large community such as New York, Chicago, Cleveland, Kansas City, or San Francisco, where a meeting place capable of seating several thousand people is available. The convention is made up of delegates from each state, the number being fixed by the party rules. These delegates are chosen in various ways, but usually at primary elections or by the state conventions. A national party convention has at least a thousand delegates attending it, and for every delegate there is an alternate. The delegates sit on the main floor, towards the front, and are grouped by states. The alternates sit at the rear, and whenever a delegate leaves the convention hall his alternate goes forward to

occupy the vacant chair. On the stage at the front of the hall are the leaders and the speakers, flanked by a great throng of newspaper men. The galleries are packed with onlookers, and looking down from this point of vantage one sees a picturesque sight. Big placards or banners indicate the state from which the groups of delegates come. Men are standing on chairs wildly cheering some speaker who is trying to make himself heard above the din. Bands are blaring forth in the intervals between speeches. Whenever the name of some popular candidate is mentioned, a great cheer arises from the floor and the galleries. Sometimes the cheering and shouting keep up for a half hour or more. Then, when the noise makers have become exhausted, the convention gets back to its work once more—but only until some other popular name gives a fresh opportunity for demonstration.

The roll calls. The main business of a national convention is to nominate a candidate for president and a candidate for vice president. Names are proposed by delegates who have been selected for the purpose. Then the voting on these names is started. The roll of the states is called and the chairman for the delegation from each state announces how his fellow delegates wish to be recorded. Usually the whole state delegation votes solidly, but sometimes it is divided. When the first roll call is finished, if no candidate has received the required majority, another roll call begins, and so on until the result is accomplished. It may take several days of almost perpetual balloting. In the Republican national convention, a simple majority is sufficient to nominate the candidate; but under the rules of the Democratic national convention a two-thirds vote is essential. At

the convention of 1924 it required one hundred and four ballotings to nominate the Democratic candidate. At any rate, the weaker candidates drop out as the roll calls proceed and in the end someone is always agreed upon. Then the tired delegates rush through the remaining business and hurry home. Sometimes, however, a national convention is a very tame affair. One outstanding candidate comes before the convention with strong support from all over the country and is named on the first ballot.

Framing the national platforms. Besides nominating the party candidates for president and vice president, the convention considers the party platform. This is usually done before the balloting begins. The platform is prepared by a committee; it consists of a rather long series of assertions and pledges which are known as *planks* in the platform. Some of them criticize the other party for what it has done or failed to do; some of them "point with pride" to what the party itself has accomplished; and yet others make more or less definite promises as to what the party will do if it is victorious at the polls. But inasmuch as the framers of the platform seek to please everybody and offend nobody, they always insert much that is indefinite, evasive, and sometimes a mere jangle of words. The idea is to prepare something that will be unanimously adopted by the convention. When the platform is adopted, it becomes the official program of the party and the candidates are pledged to stand by it.

Party organization in the states. In addition, each state has its corresponding party organs, and to a considerable extent the same is true of each county or city within the state. There is no reason why party organi-

zations should be built upon the same model all over the country, but as a matter of fact they are. There are some slight differences from state to state, but in the main the same general procedure is followed in all of them.

The state committee. The central organ of each political party in state campaigns is a body known as the state central committee. It is made up of committeemen chosen directly or indirectly by the party voters in the various counties, cities, or districts of the state, usually one from each. The state central committee has its chairman, chosen by itself, and as a rule maintains regular headquarters at the seat of state government, with a secretary in charge. Between election campaigns the committee does not meet very often, but when the time for an election draws near it has a great deal of work to do. Through its chairman, secretary, treasurer, and subcommittees it raises the campaign fund and arranges for meetings, rallies, broadcasting, campaign literature, and the other essentials. It supervises the work of the local party organizations and is responsible for keeping them efficient. In a word it is the board of strategy for the battle of the ballots.

State party conventions. As a rule each party holds a convention sometime prior to the state election.¹ This convention is made up of delegates who represent the party voters in the various counties, cities, or districts of the state. The number of delegates from each and the methods of selection are regulated by the rules of the party, or, in some cases, by the laws of the state. In the main these delegates are now chosen by the voters of the party at primary elections. When the convention

¹In some states, however, the conventions have been abolished.

meets, it chooses its own chairman and proceeds to business. In some of the states the party convention nominates the candidates for governor and other state offices, but in most of them the conventions have now lost this function. The nominations are made by the people themselves at direct primaries. But even where the nominations are made in this way, the party conventions sometimes meet to frame the platforms. In some cases, moreover, the people nominate the chief candidates (governor, lieutenant governor, etc.) at primaries, while candidates for minor offices are nominated by the conventions.

Conventions *versus* primaries. During the latter half of the nineteenth century nominations for all elective officers, from the President down, were made by party conventions. But this plan aroused much dissatisfaction among the people, especially in the case of nominations for state offices. The political bosses often got control of the conventions and nominated candidates who would not have been chosen by the rank and file of the party. So the convention system was replaced in most of the states by a plan under which the people do their own nominating at primaries or primary elections. A primary is a preliminary election. Those who desire to be the party nominee for any office merely get a petition signed by a certain number of voters. This petition is filed with the proper official and the name of the person seeking the nomination is then placed on the primary ballot. At the primary election (several weeks before the regular election) the voters who are enrolled in each party decide who shall be the party's official nominee for each office and at the subsequent election these nominees fight it out. At the primary election there is usually a

separate ballot for each party, but sometimes all the names are on one ballot, in different columns according to their party affiliations.

Merits and faults of the primary system. The primary has certain advantages over the convention in that it gives the people a direct share in making the nominations. It prevents the party organization and the bosses from having their own way. It secures nominations at the hands of the people for independent candidates who would probably not be favored by a convention of party delegates and leaders. On the other hand it entails the expense of an additional election; it gives an advantage to those candidates who are well known among the people even though they are not well qualified for office; and unfortunately primary elections are not well patronized. Not more than forty or fifty per cent of the voters go to the polls at these primaries. Hence the nominations are usually decided by a minority of the party voters.

Local party organization. Elections are not won or lost by the state committees and conventions alone. Far more depends upon work done in the townships, counties, towns, and cities. Hence each party has its organization in the local areas, even in the wards of cities, and sometimes even in the precincts within the wards. These county committees, or township committees, or ward committees are chosen in a variety of ways. Often they are selected by the party voters at primary elections, but in any case they are virtually self-perpetuating. When one member of a ward committee drops out, the remaining members choose his successor, put his name on the ballot at the primaries, and no one opposes him. Usually there is no great competition for places on these local

committees, for such service means a lot of work with no pay. The state convention and state committee provide the platform and raise the money; but the work of getting voters registered, canvassing, holding local rallies, and bringing out the vote on election day—all this must be done by the members of the local organization. It is upon them, accordingly, that the party depends for its victory in a close campaign.

The party machine. From time to time we hear references to “the machine” in state and local politics. A political machine is something that cannot easily be defined, for it varies in character from state to state and from city to city. There are big machines which cover the whole state, and little machines which cover only a single township. There are personal machines which are controlled by a single leader or boss, and machines which are controlled by a “ring” or group of bosses. Sometimes there are two or three machines within the same party, each trying to get control. In any event, a political machine is made up of a large body of active workers who are under some definite political leadership and act unitedly in politics. It is called a machine because it works with machinelike precision. All those lower down take instructions from some one higher up, and obey these instructions implicitly. A good political machine is organized and disciplined like an army.

A model machine—Tammany Hall. The most efficient party machine in the United States is the organization known as Tammany Hall in New York City. It is the local organization of the Democratic party in New York County (the downtown section of New York City), but it exercises an influence over the politics of the en-



Photo by Ewing Galloway, N. Y.

THE NEW TAMMANY HALL

tire metropolis, which includes five counties. There is a large county committee, an executive committee, and twenty-three district committees. Each district committee has its chairman, who appoints a precinct captain. There are about five thousand precincts. The executive committee works through the district committees, and these function on election day through the precinct captains. The whole organization includes about fifty thousand active workers, all of whom fit into the plan of campaign and carry out the work assigned to them. No military organization could function more smoothly.

The boss. The head of a political machine is usually known as the *boss*. He is the man who gives the orders, or presses the button when it is desired to start the machine in motion. There is a difference between a leader and a boss. A leader has a position which is clearly defined by law or by rules of the organization. He has definite duties and a direct responsibility. His acts are performed in the open. A boss, on the other hand, while he may be a party official, does not derive his power from that fact. His authority comes to him through irregular channels, chiefly by reason of his personal influence with the men who make up the machine. A boss is dangerous because he possesses power without responsibility. His name does not go on the ballot and he is not accountable to the voters. As a rule he does not argue with his followers or reason with them, but merely gives orders. Groups of bosses are known as *rings*. A boss always prefers to exercise power himself if he can, but this is not always practicable. The circumstances in some cases require him to go into partnership with other bosses, in which case the ring controls the machine and divides the

spoils. The two most famous rings in American history were the Tweed Ring, which dominated New York City a half century ago, and the Gas Ring, which flourished in Philadelphia a little earlier.

Practical politics in general. Our political machinery is now more complicated than it used to be. The average citizen does not understand it. In any event, he is too busy to give all the time that is required in connection with the work of a political campaign. Consequently most of the work is not done by ordinary citizens in their spare time, but by professional politicians who make their living out of politics. It is the theory of popular government that the people as a whole shall share equally in it, but that is not the way in which democratic government sometimes works. Government, in populous states and big cities, has become too important and too complex for amateurs. It has become a regular business, and the party organizations are an essential feature of it, even though they may not be mentioned in the constitution or the laws. In the next few paragraphs you will find a list of the more important things which have to be done in connection with a political campaign. To do these things there must be numerous workers giving large amounts of time.

Getting aliens naturalized. The work of winning an election campaign begins many months before the date set for the voting. A good party organization never leaves it all until the last few weeks. One of its first concerns is to get aliens naturalized so that they will be in position to register as voters. The immigrant seldom takes the first step in becoming a citizen. He does not know how to do it; so he waits until some worker in the ranks of the

ward organization (usually someone of his own nationality) comes and talks to him about it. This party worker obtains the date of the alien's arrival in the United States and figures out how soon he can be admitted to citizenship. Sometimes the party workers go through the crowded wards of the great cities and make a house-to-house canvass among all noncitizens. They pay special attention to the boarding houses and tenements where large numbers of foreign-born employees live. Then, when the proper time arrives, those who have become eligible are taken before the clerk of the court and obtain their first papers. This is a simple matter, but it does not give an immigrant the right to vote. He must wait until he has obtained his final papers or letters of citizenship. The party worker looks after him on this occasion also. The necessary witnesses are secured for the hearing before the court and sometimes the fees for naturalization are paid out of the party funds. By doing all this for the immigrant, a political party places him under obligation, and when election time comes, it can ask for a return of the favors.

Getting the voters registered. The next job of a party organization is to get all its own followers registered on the voters' list. A voter is of no use to the party machine unless his name is on the register. But persuading all the voters of the party to become registered involves a considerable amount of work, for it is astonishing how many voters will let their names be omitted from the lists unless they are constantly checked up. People know that they must register in order to vote, but many of them don't know where to go or what to do. Others are too busy, or forget about it. So the organization keeps

after them. It sends them printed post cards through the mails, and this is followed up by sending workers through the various precincts. These workers either call up on the telephone or make a personal visit to voters of the party who have not yet registered. This work is important because a party cannot hope to win the election in a close district unless it does thorough work before the voters' lists are closed. Sometimes an election is virtually won before the first ballot is cast, because one party organization has displayed so much greater efficiency than the other in this preliminary work.

Getting your own voters on the list is only half the battle. Keeping the other side's names off is also important. A good party organization keeps its own watchers at every registration desk where they can object to the listing of voters when rival party workers bring them in. Objection may be raised on the ground that the voter is not of full age, or is not a citizen, or has not resided long enough in the city or the ward. In case of such objection, the registration officers decide whether the voter is qualified to be registered or not.

Nominating the candidate. Next comes the work of nominating the party candidates. In cities and states which have the primary system of nomination, the party leaders and committees are supposed to keep their hands off until after the nominations are made, but this they rarely do. There is no such thing as neutrality in politics. The party machine may seem to be keeping out of the primary fight, but it is usually at work below the surface. No candidate at a primary election likes to have it said that he is being backed by the party machine or by a party boss. On the other hand, such backing is a great

help in winning the nomination, and most candidates like to have it. We say that the people choose their candidates at the primaries, but that is not what usually happens. It is more often in accord with the facts to say that those voters who go to the primaries merely endorse the candidates whom the party leaders have quietly asked them to support. One reason for this is that the total vote cast at a primary election is usually small. The voters at the primary are for the most part those who are actively interested in politics, such as officeholders and their friends, members of party committees, and persons who have dealings with the government, in other words, those who are more or less identified with the party organization. Such voters are more likely to be influenced by the wishes of their political leaders than are citizens who take no active interest in political affairs.

Raising the money. It takes a good deal of money to conduct a successful election campaign. This money is needed for advertising in the newspapers and on billboards, printing circulars, postage, hiring headquarters, the payment of clerks and stenographers, the rental of the halls for meetings and rallies, payment for the use of broadcasting stations, and many other things of the same sort. This money is raised by the party organization, largely from among its own members. Circulars are sent out asking for subscriptions to the party campaign chest. Well-to-do members of the party are visited by the leaders and asked to make subscriptions. The same is true of officeholders who owe their positions to the party. Money is likewise contributed by those who expect to be appointed to office, or to get contracts, or to obtain some other advantage in case the party candidates are elected. Every

party committee has a treasurer who receives the subscriptions and in many of the states the laws require that he shall make an itemized statement of all moneys so received.

Conducting the campaign. Many things are included under this head. Meetings are held in halls and on street corners to stir up enthusiasm. Speakers are sent over the state and their meetings must be properly announced in the local newspapers. An efficient party organization also arranges for the publication of circulars, pamphlets, and other printed material which can be sent through the mail to voters; it also provides the newspapers with an abundance of political material which it asks them to print. In some election campaigns a great deal of personal canvassing is also done. Individual party workers go from house to house, interviewing the voters and endeavoring to persuade them to vote for the party candidates. The radio is also being much used in campaigns nowadays. The candidates engage radio-broadcasting stations for a certain length of time each evening during the campaign and deliver their messages to the voters in this way. Even if the expenses amount to only a few cents per voter, they run up to a large sum in populous states and cities.

Getting out the vote on election day. A voter is worthless to a political party if he stays at home on election day. Consequently every effort is made to bring him out. When a campaign has been dull, and has excited very little popular interest, nearly half the registered voters will usually stay at home. In exciting campaigns, about three fourths of them will come out. Hence the importance of rousing the people's interest during the

weeks which precede the election. Various nonpolitical organizations, such as chambers of commerce and women's clubs, are called upon to help reduce the size of the "slacker vote" by stirring up their members. In addition the party organizations engage automobiles which are stationed at every polling place on election day, and during the afternoon these motor cars are sent in search of voters who have failed to show up. In a close contest where every vote counts, this last few hours' work sometimes turns the scale.

After the election. The work of a party organization does not come to an end when the polls are closed and the results announced. If the party has been victorious in the election, it expects to be consulted by the newly-elected officials, particularly as regards appointments, the awarding of contracts, and other matters of patronage. If the organization has been defeated in the election, it must set to work at once to strengthen itself and lay plans for the next campaign. It must replace the party workers who failed to do their duty by others who are likely to prove more capable. Sometimes it makes a change in the leadership of the organization. At any rate, it will be seen from the foregoing paragraphs that "practical politics" includes a good many things, and that most of them are of a very practical sort. In order to succeed in practical politics one must be a good organizer, able to work in harmony with other men, courageous, and not likely to be discouraged in the event of a defeat. No political party can expect to win all the time. No matter how well organized it may be, it will meet with some defeats. The important thing is that these setbacks shall be used to teach the organization lessons for the future.

Should we abolish parties? We are sometimes told that political parties ought to be abolished, because various evils are connected with them—for example, the corrupt use of money in the effort to win elections. But if that were done, who would choose the issues for the campaign? Who would nominate the candidates? Who would undertake to arouse the interest of the voters? Would the election campaign be a real one without party organization? How would we manage to do the various things which the political parties now perform for us? Some other way of getting them done might perhaps be found, but no one has yet discovered a way which would be better, less expensive, and open to fewer objections. There are various evils connected with our present system of political parties, no doubt; but these evils can be remedied without abolishing the organizations altogether. If party organizations are essential, we should try to improve them and make them more efficient.

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QUESTIONS ON THE TEXT

1. What is a political party? How and when did American political parties originate? What is the basis of party organization? What are the chief functions of political parties?

2. Give the chief steps in the evolution of American political parties.

3. What is the advantage of third parties? The disadvantage?

4. Name the major parties in the United States. How do they differ from one another? Name the minor parties. What does each stand for?

5. Describe the general structure of party organization. What are the duties and powers of the local organizations? The state organizations? The national organizations?

6. Give a description of a state party convention. Who attend it? How are they selected? What does the convention do? Are there state party platforms? What do they contain?

7. What is a primary? What are its merits and defects as compared with a convention?

8. What is meant by a party machine? What is Tammany Hall? How is it organized and what does it do?

9. What is meant by a *boss* in politics? What is a *ring*? Why are they objectionable?

10. What work is done by a political machine? Why does the party worker see that aliens become naturalized? Is the party worker rendering a service when he sees that voters are registered? Who contributes the campaign fund? Must the names of contributors be published? Is this publication fair to them? How is public opinion aroused before an election? What is meant by "getting out the vote on election day"? What are the duties of a party organization between elections? Are these duties as important during this interval as in the actual campaign?

11. What improvements can you suggest in party organization and electoral procedure?

QUESTIONS FOR DISCUSSION

1. There is a Labor Party in England and it has become one of the major parties there. Its membership includes not only manual

workers but many "white-collar" members, such as professional men, bookkeepers, clerks, etc. Why do we have no Labor Party in the United States? Is the American Federation of Labor a political party?

2. Two men are discussing a political problem and both dislike what the party platform says about it. One of them declares that he is going to leave his party because of this objectionable plank in its platform; the other asserts that he will stay in the party and try to get this particular plank changed. "Reforming a party from inside," he says "is easier than doing it from outside." With which would you agree?

3. *B* is a congressman from Minnesota. His party platform pledges a reduction in the duty on wheat. But the voters in *B*'s district are strongly opposed to this reduction. *B* himself thinks that if the duty is not reduced the price of bread will go up and thus the workers in the cities all over the country will suffer. Should *B* vote to fulfill his party pledge or should he obey the wishes of his own district?

TOPICS FOR ESSAYS

1. The Republican Party. 2. The Democratic Party. 3. The Populists. 4. The Prohibition Party. 5. The Socialist Party. 6. Robert M. La Follette and His Work. 7. A National Convention. 8. Primaries as a Method of Nomination. 9. Campaign Funds: How Raised and Spent. 10. Tammany Hall: Its History and Work. 11. The Farm Bloc in Congress. 12. The American Farm Bureau Federation. 13. The Party System in England. 14. Electoral Votes and Popular Votes. 15. Theodore Roosevelt and the Progressive Party.

SUBJECTS FOR DEBATE

RESOLVED:

1. That voting should be made compulsory.
2. That every voter should belong to an organized political party.
3. That the existing major political parties should be replaced by two new parties—Conservative and Radical—so that we may have clean-cut issues at every election.

CHAPTER VII

THE ORGANIZATION OF CONGRESS

1. It is the theory of the bicameral system that one chamber ought to serve as a check, but not too rigid a check, upon the other. In order to achieve this end, it is desirable that the members of the two chambers be chosen in different ways. If they are chosen in the same way, at the same time, and by the same electorate, they are likely to represent the same point of view. If they are chosen by different procedures or by different electorates, the two chambers are apt to be frequently in disagreement and deadlock. In France the senators are chosen in each department or county by an electoral college, while the members of the Chamber of Deputies are directly elected by the people. In Germany the Reichsrat, or second chamber, is made up of state officials while the members of the Reichstag, or House of Representatives, are directly elected. In Poland the upper chamber is elected by voters above the age of thirty, while the lower House is elected by all voters over twenty-one. How do these various plans conform to the theory of the bicameral system?
2. The Constitution provides that no state, without its consent, shall ever be deprived of its equal representation in the Senate. This equal representation is becoming a serious obstacle to government by a majority of the people. Would you favor a plan to overcome this obstacle by amending the Constitution so as to provide that any measure, if rejected by the Senate, shall go into effect when repassed by the House after such rejection?
3. The President negotiates a treaty by which the United States agrees to buy certain islands in the West Indies. The Senate ratifies this treaty and it thereby becomes, according to the Constitution, "the supreme law of the land." But when the House is asked to vote the money for the purchase, it refuses. How can the treaty be carried out?

The Congress of the United States. The national legislature of the United States, officially known as the Congress, is made up of two chambers, the Senate and the House of Representatives. Prior to the adoption of the Constitution, the Congress of the Confederation consisted of a single chamber, but the members of the constitutional convention believed that the new government ought to have a bicameral legislative body. There were three reasons for this: *First*, because all the state governments had established legislatures with two branches. *Second*, because it was felt that the bicameral system would help to prevent hasty and unwise action. *Third*, because the interests of both big and little states could be reconciled by having two chambers. The larger states wanted representation based on population; the smaller states desired that all thirteen should be represented equally. By having two chambers, it was possible to accommodate both. At any rate the framers of the American Constitution adopted a system which has now become established in virtually every country of the world.

Merits and defects of the bicameral system. The practice of having two chambers in a congress or parliament or legislature is believed to be a safeguard for the liberties of the people. There is a general opinion, both in the United States and abroad, that a single chamber is too easily actuated by passing waves of prejudice or enthusiasm, and hence that every proposed law should be submitted to a second branch of the legislative body, thus ensuring more careful consideration. Lawmaking is a serious business. The process should be amply safeguarded. Before final passage, every bill ought to be

studied from all points of view. Two chambers will give it more study than one. On the other hand the bicameral system necessarily slows up the passage of laws and often leads to prolonged delays and obstruction.

How stability and responsiveness are secured. A good lawmaking body, again, should represent the whole country and all parts of the country; it should be kept in close touch with public opinion by frequent elections. On the other hand, the whole body of lawmakers ought not to be changed at short intervals. In that case there would be no steadfastness of policy. The framers of the Constitution tried to accomplish this end by providing for a Senate whose members would be chosen by the states for six-year terms, and a House of Representatives made up of members elected by the people every second year. Thus they ensured both large districts and small districts, long terms and short terms, and hence both diversity of representation and continuity. On the whole their plan has worked well.

The House of Representatives: its organization. The House of Representatives is commonly known as the *lower house* of Congress, but this does not mean that it is the less important chamber. The House is nearly five times as large as the Senate, having four hundred and thirty-five members at the present time. The original House of Representatives, which assembled in 1789, had only sixty-five members. Unlike the Senate, the House has no maximum limit on its membership. Every ten years, after the population of each state has been determined by the census bureau, Congress by law fixes the total membership of the House for the ensuing decade.

This figure is then divided into the total population of the country and the result of this division is a figure known as the ratio of representation. For example, if the population of the country is one hundred millions, and the membership of the House is fixed at four hundred, the ratio of representation would be one congressman for every quarter of a million people.

Having fixed this ratio, it is a simple matter to determine how many representatives each state shall have. New York, with ten million population, would get forty congressmen. Maine, with seven hundred and fifty thousand people, would get only three. Such states as Nevada, Arizona, and Delaware would not get any congressmen at all, but the Constitution provides that every state, no matter how small its population, shall be given at least one representative in the House. Likewise a major fraction of the quota entitles a state to an additional representative. For these reasons the apportionment of representatives to the various states is not so simple a problem in arithmetic as might at first sight appear.

How congressional districts are formed. Congress does not lay out the districts from which its own members are elected. What it does is to allot each state its quota of congressmen, whereupon the state legislature makes the division into congressional districts in all cases where there is more than one congressman to be elected. But each state legislature must do this districting in accordance with certain rules which Congress has laid down. One of these rules is that all congressional districts within a state shall be approximately equal in population. Another provides that a district shall include none but

contiguous territory. The work of mapping out districts is usually performed by the state legislature through a special committee appointed for this purpose.

The gerrymander. Apart from the restrictions mentioned in the foregoing paragraph, the state legislatures are at liberty to delimit the congressional districts as they see fit. But in doing this they frequently arrange the district boundaries in such way as to serve the advantage of whichever political party happens to be in control of the state legislature. In other words they draw these boundaries so as to collect the largest possible number of voters from the minority party into one district. This results in making the remaining districts more easy for the majority party to control. By adding one county or town to a certain district and taking it away from another, always with the party's interests in mind, it is possible to make a district safely Republican or safely Democratic as the case may be. This practice is known as gerrymandering. The gerrymandered districts, when drawn on the map, sometimes look like a lizard, or a starfish, or a shoestring. The practice of gerrymandering is a very old one, but public opinion regards it as unfair and there is not now so much resort to it as in former times.

No reapportionment after the census of 1920. The Constitution expressly requires that there shall be a redistricting of the country after each decennial census, and in every decade down to 1920 such a reapportionment was actually made. After the announcement of the figures collected by this last-named census, Congress discussed at great length the whole question of redistricting, including the proper size of the House. Year after year

the discussion went on, but no action was taken. Finally, in 1928, it was decided to let the whole matter go over until after the next census, to be taken in 1930. This delay was an evasion of the Constitution, which provides that Congress "shall" act; but when Congress fails to act in the matter of reapportionment, there is no way of forcing its hand. No court, not even the Supreme Court, can compel Congress to pass a law.

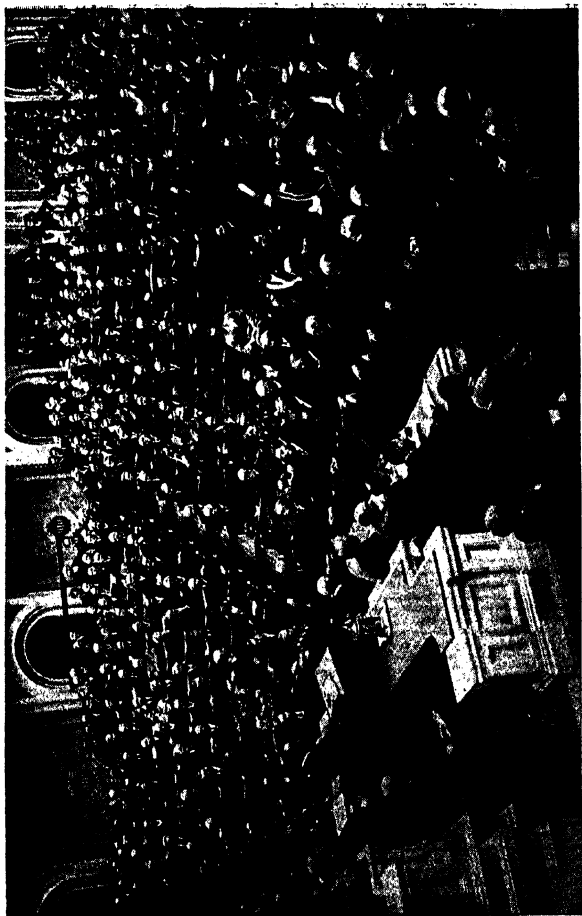
How congressmen are chosen. Every second year an election is held in all the congressional districts of the country and one congressman is chosen from each district. Every state determines for itself how the nominations shall be made, and each state is responsible for conducting the election. The state governments print the ballots, select the polling places, and appoint the officers who preside at the polls. The qualifications for voting at congressional elections are the same as those established in state elections. To be eligible for election a representative must be twenty-five years of age and must have been a citizen of the United States for at least seven years. There is no constitutional requirement that a congressman must be a resident of the district which elects him; it is enough that he be a resident of the state in which the district is located. As a matter of practice, however, congressmen practically always reside in the districts from which they come. There is a feeling that in order to know the needs of a district, a congressman should actually live in it.

Congressional sessions. The House holds one session each year, so that there are two regular sessions between elections. One is a short session beginning in December and ending not later than the following fourth of March;

~~the~~ other is a long session beginning the next December and lasting until July or August. The short session always begins in the even-numbered years, a month after the congressional election; but the newly elected representatives do not take their seats at this session because their terms of office do not legally begin until the following fourth of March. Hence it is usually thirteen months after his election before a new congressman actually takes his seat.

The "lame duck" session. For that reason, the short session which follows the election is commonly known as the "lame duck" session. Both houses of Congress contain, at this session, a number of members who have just been defeated at the polls. Sometimes they are numerous enough to hold the balance of power. It is proposed to amend the Constitution so that a new President shall be inaugurated in January following his election and that the new Congress shall begin its work at the same time. This would also do away with the uneven sessions. Both sessions would be of about equal length, running each year from January until June.

Procedure in the House. When a new House of Representatives assembles it has no Speaker, no rules, no committees. Its first task is to provide itself with all three. The House is authorized by the Constitution to elect its own presiding officer, who is known as the Speaker. He has general charge of all the proceedings, and for a long time appointed all committees, but this latter power has been taken away from him. The Speaker calls the House to order, enforces the rules, puts questions to a vote, announces the results, and signs all bills after they have been passed. As a regular member of the



Harris and Ewing, Washington. From World Wide Photos.

**PRESIDENT COOLIDGE DELIVERING HIS WASHINGTON'S BIRTHDAY ADDRESS IN
THE HOUSE OF REPRESENTATIVES**

Members of the Cabinet and Justices of the Supreme Court are seated in the front row; Senators and Representatives occupy the rest of the great hall

House, the Speaker has the privilege of voting on any question and may participate in debate. When he desires to speak from the floor, the Speaker temporarily appoints some other member of the House to take the chair. Whoever is presiding, whether Speaker or temporary chairman, decides all points of parliamentary law and procedure, but may be overruled by the House. The Speaker's position is one of great importance. By his decisions on points of order he can help measures to move along or he can place obstructions in their way.

Committees of the House. In theory all members of committees are chosen by the House at the beginning of each new Congress; that is, at the beginning of each long session. But as a matter of actual practice the choice is made by a caucus of each party. The Republicans meet in caucus and select their representation on each committee; the Democratic members of the House meet in caucus and do the same thing. The majority party takes the chairmanship and also ensures for itself a working majority on every committee. In making up lists of committeemen, great emphasis is placed on the principle of seniority. In other words, a new member is usually placed on unimportant committees and at the bottom of the list. Older members are given the chairmanships and receive assignments to the more important committees.

Work of the committees. In the House of Representatives there are nearly sixty committees in all, the more influential being those on rules, appropriations, ways and means, interstate and foreign commerce, post offices, military affairs, naval affairs, and agriculture. In addition there are numerous committees of minor consequence

with very little work to do. These committees are kept in existence because it is a rule that the chairman of every committee, no matter how unimportant, is entitled to an office, an allowance for clerk hire, and various other perquisites. ✓ Hence you will find included on the list a committee on the disposition of useless papers; a committee on mileage, and other inactive committees of the same sort.

The course of a bill through Congress: introduction of measures. The work of a committee may best be explained by describing the various stages through which a measure passes on its way to become a law. To begin with, any member of Congress may introduce a bill, whether for himself or for somebody else. This he does by writing his name on the back of it and dropping it into a receptacle at the Speaker's table. During the early days of each session many thousands of bills are introduced in this way. One of the Speaker's assistants takes each bill from the basket and refers it to the proper committee. For example, if the bill proposes an increase in the size of the regular army, it goes to the committee on military affairs. If it deals with railroad rates, it goes to the committee on interstate commerce. Every bill must be referred to some committee before the House will consider it.

The committee hearings. Then comes the next step. The various committees receive their bills and place them on a list for consideration. In due course each bill comes up for a committee hearing. Members of the committee meet in their respective committee rooms and listen to the arguments *pro* and *con*. Any citizen has a right to appear and be heard at these committee sessions.

Sometimes, in the case of an important bill such as a tariff measure, the hearings may continue for several days or even for weeks. They are usually held in the mornings, because the House itself is in session during the afternoons. When the hearings are concluded, the committee decides what action it will take. It may recommend to the House that the bill be passed as it is or with amendments. Or the committee may redraft the bill and report it to the House in an entirely new form. Or, again (and this is what most often happens), it may feel that the bill should not be passed at all, in which case it merely refrains from making any report to the House. Without a report from some committee, no bill ever gets back to the House unless the House by special vote calls for it, which it almost never does. When no report or recommendation is made, therefore, a bill is said to have been "killed in committee." The great majority of measures die in that way. More than eighty per cent of all the bills introduced at each session fail to get beyond the committee stage.¹ One committee, a few years ago, acquired such a reputation for accumulating dead bills that its committee room was nicknamed the "legislative morgue."

The debate. But let us suppose that a bill is favorably regarded by a committee and is duly reported to the House. It is then placed on one of the calendars or lists of bills; printed copies are made; and when its turn comes, each measure is called up for a vote. A debate on it may then take place. Amendments may be proposed and

¹On many bills the committees do not even hold hearings; if they did, they would never get through with their work. Measures by the hundred are introduced each year by congressmen simply to please people in their districts and without the slightest expectation that they will ever be passed.

voted upon. Sometimes, in the case of important measures, the debate may continue for a considerable space of time—as in the case of an income tax bill. Usually, however, the leaders agree in advance upon the amount of time that is to be spent on a measure, and when this time-limit expires, the vote is taken. The House has a great deal to do; if it permitted unlimited freedom of debate, it would never get halfway through its calendars. Under the rules of the House, therefore, no one is allowed to speak for more than an hour on any question, save by unanimous consent. In committee of the whole, all speeches are limited to five minutes. At any stage in the debate, moreover, the debate may be brought to a close by means of the procedure known as “moving the previous question.” It is a common practice for the leaders to arrange the list of speakers in advance. Those who desire to speak give their names to the leaders and are put on the list, which is then given to the presiding officer. He can prevent any others from participating in the discussion by refusing to recognize them if they try to break in on the debate. But when one member is speaking, another member may rise and ask him to “yield the floor”; that is, give up part of his time. The congressman who has the floor can yield or decline as he sees fit.

The committee of the whole. In considering important measures, the House often sits as a *committee of the whole*. This means that the entire membership forms one great committee, but there are some important differences between the House in committee of the whole and in regular session. In committee of the whole, the Speaker does not preside but always calls some member to the

chair; the strict rules of procedure do not apply; one hundred members form a quorum (in regular session a majority of all the members is needed to furnish a quorum), and there are no roll calls. In a word, the system enables the House to do business informally. When it has finished consideration in committee of the whole, the Speaker resumes the chair and the House acts on the committee's report.

Final stages of a bill. Under the rules each bill must be given *three readings*. This does not mean that every word of it is read to the House three times. Indeed, it is not usually read to the House at all. The first "reading" is merely an announcement of its title when it is being referred to a committee. For the second and third readings it is distributed to the members in printed form. After it has been debated, voted upon, and passed, the bill is engrossed on parchment, signed by the Speaker, and sent up to the Senate where it again goes through the whole process of committee hearings and discussion on the floor.

Having passed the Senate, it is signed by the presiding officer of that body and sent to the President for his approval. The President, as will be shown a little later, may sign it, veto it, or allow it to become a law without his signature.

Adjusting differences between the two houses. If one chamber amends a measure and the other chamber agrees to the amendment, the bill goes directly to the President. But what happens in case either the Senate or the House makes amendments to which the other does not agree? That is what frequently occurs. In such cases a committee of conference is appointed, usually

of three members from each chamber. These conferees meet and try to reach a common ground by compromise. Then, if they can agree, they report to their respective chambers and it is an unwritten rule that the latter must accept or reject the conference report without further amendment. If the measure is accepted by both houses as it comes from conference, it then goes to the President; but if the committee of conference fails to agree, or if its report is rejected by either house, the measure is dead.

Privileges and immunities of congressmen. Members of the House of Representatives, and senators also, are privileged from arrest on civil causes during the session. They may not be sued for any statement made on the floor of the House. Stenographic reports of all that goes on in the House are printed in a publication known as the *Congressional Record*, which appears daily while Congress is in session. A great deal gets into the *Congressional Record* which has never been spoken on the floor of the House. This is because any member may ask, and by unanimous consent may be given, the right to insert speeches or parts of speeches in the record when these have not been actually delivered. Then any congressman may have these speeches reprinted by thousands of copies and circulated to the voters of his own district. The public treasury pays for it all, including the printing of the speeches and their circulation free of postage through the mail.

Is the House too large? There is a widespread opinion that the House of Representatives has now grown too large and that its membership ought to be reduced. The Senate, of course, cannot be cut down in membership, for the Constitution provides that each state shall have two

Senators. The size of the House is not fixed by the Constitution and hence it can be determined by law at any time. There is always a point at which a legislative body, if it continues to grow, becomes unwieldy. Its very size stands in the way of good work. Compared with the national legislatures of other countries, the American House of Representatives is not unduly large. The House of Commons in England has more than six hundred members; the Chamber of Deputies in France has about the same number.

Its lack of leadership. These foreign legislatures, however, have provision for recognized leadership which the House of Representatives does not have. The Constitution took for granted that Congress, somehow or other, would lead itself. It does not say anything about who shall prepare the bills for introduction, or who shall guide measures through the House. In European countries this work is done by members of the cabinet, who have seats in the legislative body and are its leaders. In the United States, where members of the cabinet do not sit in either house, the work has to be done by steering committees and other makeshifts which have no legal status. This lack of definite, well-recognized leadership is the chief obstacle with which Congress has to contend in the effort to get its work done.

The Senate: its organization. Let us turn now to the Senate. It is commonly known as the *upper house* of Congress, but this does not mean that it is the more important chamber. Most measures are first introduced in the House and go from it to the Senate, although it is permissible to introduce in the latter any bill except one that relates to revenue or expenditure. "The Senate

represents the states while the House represents the people." That is the theory; but to-day it has little basis in fact. Both chambers are now directly elected by the people and represent them. In the original Constitution it was provided that each state should have two senators elected by the legislature thereof, and for more than a hundred years that method of choosing senators was used. The two houses of the state legislature in each state chose the senators from that state. When the time came to elect a senator, the two branches of the state legislature first voted separately. If, voting separately, they could agree, well and good; if not, the two houses of the state legislature then met together and took a joint vote. This method, however, did not always work smoothly. It sometimes resulted in deadlocks, with no election at all. Occasionally, when a compromise agreement was reached, this resulted from corrupt deals and bargains among the state leaders. This method, moreover, gave the people no direct share in the choosing of senators.

Since the seventeenth amendment. Accordingly, in 1913, the Constitution was amended to provide that members of the United States Senate should be chosen in each state by popular vote. The term remains fixed at six years, and one third of the senators retire every second year as in the original plan. No one is eligible for election to the Senate unless he is thirty years of age or more. He must also have been a citizen of the United States for at least nine years, and at the time of his election must be an inhabitant of the state for which he is chosen. In case a vacancy occurs in the Senate, the governor of the state in which the vacancy occurs may be empowered by

the state legislature to fill this vacancy by making a temporary appointment which holds good until the next senatorial election is held.

The principle of equality in the Senate. Each state, large or small, has two senators. But while equal in legal status, the states have long since become very unequal in area, population, and importance. Nevada has only eighty thousand population while New York State has more than ten million. In area, Texas is nearly a hundred times the size of Rhode Island. If representation were allotted on a basis of numbers, New York would have about two hundred and fifty senators. This emphasis on equal representation seems unfair to the larger states; but it was a necessary concession to the smaller commonwealths at the time the Union was formed. Unless it had guaranteed these smaller states an equal right of representation in at least one chamber of Congress, the Constitution would never have been adopted. Population, moreover, is not the only thing to be taken into account in setting up a Federal government. The interest which one section of the country may have in the affairs of the nation is not precisely measured by the number of people who inhabit it. Were it not for the equal representation of the states in the Senate, it would be possible for the populous commonwealths in the East and Middle West to outvote the whole South and Far West on any question.

Can the equality be changed? The Constitution provides that no state, without its consent, can ever be deprived of its equal representation in the Senate. But it does not stipulate that the powers of the Senate must always be kept as they are. It would be possible, therefore, to amend the Constitution in such way as to give

the House of Representatives a decisive voice in case of a disagreement between the two chambers. That is what has been done in England, where the House of Commons now has the last word in case of a deadlock with the House of Lords. Equal representation in the Senate must remain a fixed principle of American national government; but equal legislative power need not if the people desire to take it away by amending the Constitution.

Meetings and conduct of business in the Senate.

The Senate of the United States holds its regular sessions every year in its own chamber at Washington. As a rule both the Senate and the House meet at the same time; but the Senate may be called by the President in special session, even when the House of Representatives is not sitting. This is because it has some special powers which are not shared by the House; namely, the trial of impeachments, the confirmation of presidential appointments, and the ratification of treaties.¹ The Constitution provides that the Vice President of the United States shall preside at meetings of the Senate, but he has no vote except in case of a tie. In the absence of the Vice President, the Senate elects a president *pro tempore* from among its own members.

Senate procedure. The Senate makes its own rules of procedure. On the whole, these rules are simple—much more so than the rules of the House. In brief, they require that every measure shall receive three readings before being passed, but the first two readings are merely nominal and are given before the bill is referred to a committee. The debate, if any, comes upon the occasion of the third reading, when amendments may be offered

¹See Chapter IX.

and voted upon. Unlike the House, the Senate does not regularly give priority to any class of measures except that appropriation bills have a certain right of way. In the Senate, moreover, debate is not limited, as in the House; there is no restriction upon the amount of time that a senator may occupy in making speeches; but since 1917 it has been possible, by a two-thirds vote, to restrict each senator to one hour and thus bring a debate to an end within a reasonable time. This relative freedom of speech in the Senate has permitted a good deal of filibustering, particularly in the closing days of a session. The term *filibuster* is used to designate the attempt of a small group of legislators to prevent some action on the part of the majority by holding the floor, one speaker after another, for hours at a time. As a rule, the Senate's sessions are public, but it may go into executive session behind closed doors at any time. This it often does when the ratification of treaties or the confirmation of the President's appointments are under discussion.

Senate committees. A large part of the Senate's work is done through regular committees. The most important of these are the committees on finance, appropriations, foreign relations, the judiciary, and interstate commerce. The first two of these committees consider all measures affecting revenue and expenditure. The committee on foreign relations and that on the judiciary owe much of their importance to the fact that they pass upon appointments to the higher positions in the diplomatic service and to Federal judgeships. Likewise, the committee on foreign relations considers all treaties before they are discussed by the Senate as a whole. Senate committees are made up of from three to seventeen members, and



From World Wide Photos

A SENATE INVESTIGATING COMMITTEE AT WORK

every senator is sure to be assigned to one or more committees. The selection of these committees is made at the beginning of each Congress by special committees chosen for that purpose by the caucus of each party. The party caucus is made up of all the senators who are members of the party. As a rule, of course, the majority party in the Senate is given a majority on every important committee. Each committee has its own chairman, and the chairmen of committees are invariably men who have had a considerable term of service. Mention should be made of one committee which is not mentioned in the rules of the Senate but which is nevertheless of great importance. This is the steering committee, so-called, which is supposed to be named by the caucus of the majority senators but which is virtually chosen by the majority leader. Its work is to determine what measures most urgently need to be passed, and then to steer these measures through the Senate.

The Senate's immunities. Members of the Senate have the usual immunities of legislators. They are privileged from arrest on civil complaints during the session, but are not immune from arrest on criminal charges. The Constitution provides that what a senator says on the floor of the chamber is privileged and that for such statements he shall not be questioned in any other place. In other words, he is not subject to the law of libel as administered by the courts. But the Senate may itself punish a member for disorderly conduct and by a two-thirds vote may expel him from its membership. If the Senate believes that any member has not been properly elected, moreover, it may deny him the right to a seat. It should be mentioned that a senator is not "a civil

officer of the United States" and hence may not be impeached before the Senate itself.

The Third Chamber of Congress. Newspaper writers sometimes speak of Congress as having an unofficial third House, which is not mentioned in the Constitution. They refer to *the lobby*. When Congress is in session a large number of agents for various organizations (such as the Farm Bureau Federation, the Anti-Saloon League, the American Federation of Labor, the Manufacturers' Association, etc.) come to Washington and spend much of their time at the Capitol. They are in the lobby and elsewhere interviewing congressmen and senators. Their object is to help certain measures along and to prevent the passage of others. These legislative agents number several hundred in all, and they are often influential. Many bills have been defeated by the lobby. Proposals have been made to get rid of the lobby altogether, but this would not be easy and probably would not be desirable. Congressmen cannot possibly take time to inform themselves fully on the merits or defects of all the bills that come before them. The lobby provides them with the arguments for and against. Lobbyists thus perform a service, but sometimes they bring improper influence as well as arguments to bear on the congressmen.

Congress and the public. Public opinion is not always fair in its attitude towards Congress. It is inclined to look upon both houses as being made up of professional politicians who waste time in futile debate and are far more concerned for their own reelection than for the welfare of the country. This popular attitude is unjust. The great majority of senators and representatives are men of ability and are actuated by an earnest desire to

serve the public well-being. They do their best to get through a great mass of business in the relatively short time that is at their disposal. Having no recognized leadership, the congressmen are often at a loss to know what had best be done, and time is wasted while they make up their minds. These men represent all portions of a vast and varied country—a half continent, in fact. If they are confused and seem evasive on some important questions, it is often because the country is divided in its opinions and this division of opinion naturally reflects itself in Congress.

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QUESTIONS ON THE TEXT

1. What is Congress? How is it made up? Why was a bicameral system of legislation established? What are its merits? Its defects?
2. The House of Representatives is frequently called the *lower house*. Does this mean it is a less important chamber?
3. How large is the House of Representatives at present? How large was it originally? How do you account for this change? When

does a reapportionment of members take place again? Is the House too large? Justify your answer.

4. How are congressional districts formed? What is *gerrymandering*?

5. How are congressmen chosen? What are their qualifications? Their term of office?

6. How long is a "session" of Congress? What is a *long* session? A *short* session? A *special* session? A *lame-duck* session? Should the Constitution be amended as respects congressional sessions? How and why?

7. What is meant by congressional *procedure*? Who makes the rules of procedure? How is the Speaker of the House chosen? What are his powers to-day? What power has been taken away from him? Is there a limitation of debate in the House? Explain.

8. How does the House do its work? How are its committees chosen? How many committees are there in the House? Name some of the important ones. What are minor committees? Why are they maintained? What are special committees? Explain what is meant by the "committee of the whole."

9. What does the Senate represent?

10. How were senators originally chosen? How are they chosen now? Why was the Seventeenth Amendment passed?

11. How many senators are there? Why was the "principle of equality" adopted? Can the equality be changed? May the equal power of both Houses be changed? If so, how?

12. What are the qualifications of a senator?

13. How often does the Senate meet? Where does it meet? May it be called in special session without the House? For what purpose?

14. Who is the presiding officer of the Senate? What are his duties? Why is there a president *pro tempore*? How is he chosen? What are his duties?

15. Describe the procedure in the Senate. Who makes the rules? How does the Senate do its work? Are Senate committees important? Which ones are the most important? How are they chosen? Is debate limited in the Senate? What is *filibustering*?

16. Are sessions of the Senate open to the public? Can secret sessions be held? Ought they to be held? Give your reasons.

17. What are the privileges and immunities of a member of Congress?

18. Trace step by step how a bill becomes a law.

19. What is the *Congressional Record*? What goes into it?

20. Who constitute *the lobby*? What is the function of lobbyists? Is their work of any value? In what way? Should lobbying be regulated? If so, how?

QUESTIONS FOR DISCUSSION

1. By whom are bills drawn in European countries? Should there be a regular official bureau at Washington for the drafting of bills? What is a *joker* in a legislative bill? What is meant by *log-rolling*, the *pork barrel*, the *cloture*?

2. Compare the Senate with upper chambers in Great Britain, France, Germany, and Italy.

3. In England there is *plural voting* in parliamentary elections. What is meant by this, and do you favor it? Why?

4. In Germany it is provided that all bills relating to matters of social or economic policy must be submitted to a National Economic Council before being passed on by the regular parliament. This National Economic Council is made up of representatives from industries, labor organizations, agricultural associations, etc. Would you favor some such arrangement in the United States?

5. In the United States we have *geographical* representation; in Russia there is *vocational* representation. What do you understand the latter method to be, and what do you think of it?

TOPICS FOR ESSAYS

1. The History of Increases in the House of Representatives. 2. Lawmaking in England and the United States Compared. 3. How Laws are Made in France. 4. Proportional Representation: Is It Desirable? 5. The Seventeenth Amendment. 6. The History of a Tariff Bill. 7. Lobbying and the Methods of Controlling It. 8. House

and Senate Procedure Contrasted. 9. The Speaker in England and in America. 10. Historic Debates in Congress.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the House of Representatives should be reduced in size.
2. That members of the House should be elected by each state at large and not by congressional districts.
3. That when the Senate defeats a bill which has been passed by the House, a second passage by the House should be sufficient to make the bill a law, and this provision should be established by an amendment to the Constitution.

CHAPTER VIII

THE POWERS OF CONGRESS

1. It is sometimes said that Congress exercises all powers which are of nation-wide importance while the state legislatures retain jurisdiction over things of a local nature. Is that statement true? Can you name some matters of nation-wide importance that Congress does not control? Some matters of more than local importance which are left to the states?
2. "The power to tax involves the power to destroy," as Chief Justice Marshall once said; hence no government should ever be given unlimited taxing power. Neither Congress nor the state legislatures, nor city councils have unlimited taxing power in the United States. They are all subject to restrictions. What are the limitations on the taxing power of the Federal government?
3. On March 31 a truckload of merchandise was being transported from New York City to Portland, Maine. When the truck reached Boston it was left in a garage over night and in the morning it was assessed for taxation by the local assessors under the provisions of a Massachusetts law which permits the levy of a tax on all tangible personal property within the state on the first day of April in each year. The owners refused to pay the tax on the ground that no tax can be laid upon the exports from any state and that the laying of this tax was an interference with interstate commerce which Congress has the exclusive right to control. Were they right in their refusal? Why?
4. Could Congress pass a law requiring that all companies engaged in interstate commerce should invest half their surplus funds in U. S. government bonds, thus enabling the government to borrow money more easily? Explain.
5. Congress votes an appropriation covering three years in order to finance the building of army airplanes. The objection is raised

that this action is unconstitutional because the Constitution restricts all army appropriations to two years. Could this objection be overcome by establishing a separate Department of Air Defence? Give reasons for your answer.

How powers are divided. The powers of Congress are set forth in eighteen clauses of the Federal Constitution (Article I, Section 8). Hence it is customary to speak of the eighteen powers of Congress, although there are in reality more than eighteen separate powers, as will be found by anyone who takes the trouble to count them. It is sometimes said that the framers of the Constitution, in dividing authority between Congress and the state legislatures, gave to Congress all powers which seemed to be of nation-wide significance, while reserving to the states such authority as appeared to be of local importance only. That impression is not well-founded. What the framers of the Constitution did was to take the old Articles of Confederation and try to find out by careful study just what powers the older Congress needed but did not have. Then they proceeded to make good the deficiencies. They gave the new national government such powers as would enable it to obtain revenue, borrow money, keep the various states from quarreling with one another, build up home industries and provide for the national defence. They gave it just enough power to make it function—and no more.

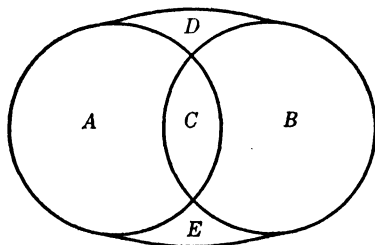
The source of power in each case. Hence the national government is said to be a government of delegated or enumerated powers. It possesses no powers which are not given to it by the Constitution. There is nothing that Congress can do without finding warrant for it in words of that doctrine. Its powers are listed, one by

one, in seventeen clauses, while the eighteenth clause contains what is known as the *implied-powers* provision. This provision gives Congress the right to make all laws which may be found "necessary and proper" for carrying the seventeen expressed powers into effect. Thus the powers of the national government are "enumerated." On the other hand, no list of powers reserved to the several states is included in the Constitution. The states simply retained all the powers that were left. The state governments, therefore, are governments of *residual* powers. Anything that was not expressly or impliedly given to the national government belongs to them. For example, the Constitution did not give the national government power to charter cities or to fix the maximum hours of labor in factories, or to regulate the price of electric light. These powers accordingly belong to the states. In the words of the Tenth Amendment, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." In a few cases, however, the powers of the national and state governments overlap. For example, both are empowered to enforce the Eighteenth Amendment. In some cases, again, certain powers must not be exercised by any branch of American government—for example, the creation of a nobility or the enactment of bills of attainder.

The division of powers illustrated. This division of powers may be made clearer, perhaps, by the diagram on page 153.

Let the ellipse there represent the sum total of governmental powers. In other words, all the powers that any government could conceivably possess. Then Circle

A will include all powers granted to the national government. Circle *B* represents all powers reserved to the states. Segment *C* represents the few powers known as concurrent powers; that is, they are exercisable by both



sets of government. Segment *D* refers to powers which are prohibited to the nation, and Segment *E* to powers which are forbidden to the states. By a careful study of the Constitution one can list the powers which fall into each group.

The powers of Congress in groups. The eighteen powers of Congress can be grouped under five heads: (1) *financial*, including the power to levy taxes and to borrow money; (2) *commercial*, the power to regulate foreign and interstate commerce; (3) *military and naval*, the power to declare war, support armies, maintain a navy, and call out the state militia; (4) *monetary*, the power to coin money and issue paper notes; and (5) *miscellaneous*, including the power to maintain a postal service, to establish Federal courts, to provide for the issue of patents and copyrights, to regulate the naturalization of foreigners, to govern the national capital, and to make all laws "necessary and proper" for carrying these powers into operation.

The power to tax. The first and in many respects the

~~most~~ important power given to Congress by the Constitution is the power to tax. The Constitution provides that Congress may levy taxes, duties, imports, and excises in general; but three important limitations are placed upon this authority. In the first place, all taxes must be uniform throughout the United States. Congress is not permitted to levy taxation at one rate in one section of the country and at a different rate in another section. It would not be constitutional, for example, to impose one rate of duty upon goods entering the port of New York and another rate upon merchandise entering the port of San Francisco. The requirement of uniformity does not mean, however, that Federal taxation must fall equally on all parts of the country. Because of differences in wealth and population, it is inevitable that some sections will pay more taxes into the Federal treasury than others.

Direct taxes. A second limitation relates to *direct* taxes. The Constitution requires that all direct taxes levied by the Federal government shall be apportioned among the several states according to their respective populations as ascertained by the census. There are only two kinds of direct taxes; namely, taxes on real estate and taxes on persons, the latter commonly known as poll taxes. Congress could not levy a general tax on real estate, therefore, on a basis of its valuation. Such a tax would have to be apportioned among the various states as above stated. The total value of real estate in New York State, let us say, might be four times the total value of real estate in California; but New York would pay only twice as much (not four times as much) as California if a direct tax on real estate were levied by Congress

because her population is only twice as large. As a matter of fact, the Federal government has never levied any tax on real estate. On a few occasions it has levied a poll tax; the last occasion was during the Civil War.

Income taxes. In 1894 Congress passed a law imposing a tax upon *incomes*, including incomes from land. The Supreme Court held that an income tax, insofar as it was levied upon the income from land, was in effect a tax upon the land itself, and hence a direct tax. For this reason the income tax of 1894 was held unconstitutional, insomuch as it made no provision for an apportionment of the levy among the states in accordance with their respective populations, as the Constitution requires. The difficulty was surmounted in 1913, however, by the adoption of the Sixteenth Amendment, which provides that Congress may levy taxes on all incomes without the necessity of apportionment.

No taxes on exports. The third limitation upon the taxing power of Congress relates to duties on exports. The Constitution stipulates that no tax may be levied upon the exports from any state. This limitation was inserted at the demand of the southern states which were afraid that Congress might put an export tax on their great staples, tobacco and cotton. The Supreme Court has interpreted the limitation to mean that no tax can be levied either by the national government or by a state upon any goods exported from the United States.

Taxing state obligations. It is not so stipulated in the Constitution, but it has developed as a principle of American government, that Congress may not levy taxes on the income from state bonds, or on state property, or on the salaries of state officers. This immunity of the

State from Federal taxation applies also to the political subdivisions of the state, such as cities, counties, and towns. The reason is that if the national government had this power it might use it to hamper the government of the states. Each branch of government, national and state, is assumed to be supreme within its own sphere and not to be hampered by the other.

Sources of the national revenue. Subject to the foregoing limitations (which relate to uniformity, direct taxes, export duties, and state obligations), Congress may tax anything and anybody, at any time. To-day there are three principal sources of national revenue: (1) customs duties; (2) taxes on the net incomes of corporations, partnerships, and individuals, and (3) excises of various sorts. Customs duties are levied upon goods imported into the United States from other countries. The rate of duty is determined by a tariff law, which contains elaborate schedules setting forth the rate of duty to be imposed upon each class of merchandise. These rates may be either specific or *ad valorem*, that is, the amount of duty may be in accordance with quantity or in proportion to value. For instance, eggs may be made dutiable at so much per dozen, and silk at so many cents on the dollar of value. Occasionally imports are subject to both forms of duty. Federal taxes are also levied on the income of individuals, partnerships, and corporations. The tax on the net income of a corporation is at a flat rate (12% under the present law), while taxes on the net incomes of individuals are at varying rates according to the size of the income. They range from one-half of one per cent up. Excises, or internal revenue taxes, are levied upon tobacco, cigars, cigarettes, and certain other luxuries; likewise upon

club dues and theater tickets above a certain rate. These are the three principal sources of the national revenue, but there are some others as well. One of these is the inheritance tax which is laid upon the estates of deceased persons, in cases where the property is of considerable value. The total revenue obtained from these combined sources is now nearly three billion dollars per annum.

National expenditures. Practically all this revenue is expended within twelve months for national purposes. Congress appropriates the money, and the expenditure of it is controlled by the executive branch of the government. No money can be spent from the national treasury, however, without a prior appropriation made in the form of a law and passed by both houses of Congress. These appropriations are combined once a year into a huge appropriation bill known as the *budget*. This measure contains large appropriations for the maintenance of the army and navy, the payment of pensions, interest on the public debt, the support of the foreign service, the upkeep of the United States courts, the improvement of rivers and harbors, the encouragement of agriculture, and a great many other Federal functions.

The national budget system. The national budget is framed in the following manner: First of all, each executive department, bureau, or board makes up a statement of its probable financial needs for the coming year. These estimates are then transmitted to the director of the budget, an official appointed by the President. He compiles the figures into a single document and, with the help of figures which are supplied by the Treasury Department, he makes up a table showing the estimated revenues for the year. All these figures, when put together, are trans-

mitted to the President, who forwards them to Congress with his recommendations.

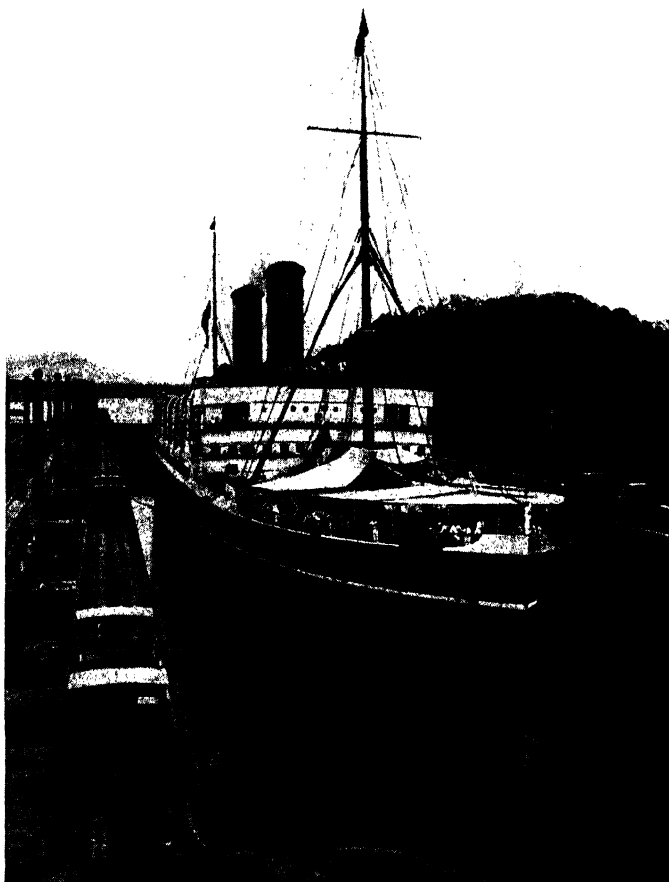
Now comes the next step. The budget goes first to the House of Representatives. Without debate it is referred to its committee on appropriations, which consists of thirty-five members. This committee studies the document with the help of subcommittees. The latter, after hearing the heads of departments and members of boards, may make recommendations for increases or decreases. When the study has been completed, the estimates of expenditure are embodied in a series of appropriation bills and are laid before the House, where they are debated, to some extent amended, and ultimately passed. Having passed the House, they go to the Senate where they are referred to the committee on appropriations and ultimately come back to the Senate for discussion and vote. Then when the appropriation bills pass the Senate, they are laid before the President for his signature. If the two houses fail to agree on any items, such matters are referred to committees of conference, made up of selected senators and representatives. It is the function of these conference committees to adjust the items and get them finally passed.

Deficiency appropriations. Not all the expenditures for the year can be embodied in a single budget. In preparing the estimates, some things will be overlooked. Other emergencies will arise which could not have been foreseen. Hence the departments are permitted to file deficiency estimates after the main appropriations have been considered. Furthermore, some proposals involving the expenditure of money are introduced by individual congressmen at every session. Such measures go first to

the specialized committees concerned; as for example, the committee on foreign relations, post offices, or interstate commerce. If they are favorably reported by these committees, they are then transmitted to the committee on appropriations for its approval and finally come before the House for action. In the British Parliament it is a rule that no proposal to spend money can be considered unless it comes from someone who represents the administration; but in Congress the right of the individual member to propose expenditures has been preserved. The administration—that is, the President and his advisers—is held responsible by public opinion when there is too much spending, yet they cannot wholly control it.

The power to borrow money. The Constitution provides that Congress shall have power to borrow money on the credit of the United States. No restriction is placed upon this authority. The national government may borrow at any time and in any amount. It has sole power to determine the method of borrowing. As a rule, however, the national government has borrowed money by the sale of bonds or treasury certificates. During the World War an enormous amount of money was borrowed on the nation's credit through the sale of Liberty Bonds—nearly thirty billions of dollars in all. These bonds were sold through the banks to the people in small denominations. Since the conclusion of the war, about twelve billions of this debt have been paid off.

The banks as agencies of national borrowing. It is by virtue of its power to borrow money that Congress has established the national banking system, the Federal reserve banking system, likewise the system of farm loan and intermediate credit banks. No express authority



Courtesy Canadian Pacific Steamships

GOING THROUGH THE LOCKS IN THE PANAMA CANAL

to charter banks is given to Congress by the terms of the national Constitution, but the Supreme Court has held that the expressed power to borrow carries with it the implied power to set up convenient borrowing agencies, such as banks or credit institutions. And Congress has done this. The whole system of banks and banking will be explained in a subsequent chapter.

The power to regulate commerce. It is provided in the national constitution that Congress shall have power to regulate commerce among the several states and with foreign nations. This provision was framed at a time when virtually all commerce was carried on by sailing vessels or by stage coach. During the intervening years, however, there has been an enormous development in means of transportation. The steamship, the railroad, the motor truck, and the airplane have wrought a revolution in methods of carrying both passengers and goods. Not only this, but the telegraph, the telephone, and the radio have made their appearance as new methods of communication. The Supreme Court has interpreted the words, "to regulate commerce," as covering all these innovations. Congress to-day has authority to regulate the transportation of merchandise or passengers by steamship, railroad, motor car, or airplane—provided the transportation is between the United States and a foreign country, or provided it crosses any of the state boundaries. Congress also has authority to regulate rates and conditions of service over telegraph lines and telephone systems; it can also regulate the transmission of power, or the sending of messages by radio. By virtue of its authority to regulate commerce, Congress has passed laws restricting immigration, establishing a protective tariff, and

providing for the inspection of foodstuffs. Next to its taxing power, the right to regulate foreign and interstate commerce is the most important power that Congress can exercise in time of peace. In another chapter of this book, occasion will be taken to explain in detail some of the things that the national government does for the people through the exercise of its commerce power.

Monetary powers. The national government, under the Constitution, has the exclusive right to coin money. The states are forbidden to do it. Nothing is said in the Constitution about the right of Congress to issue paper money, but the Supreme Court held that Congress may exercise this power as an incident of its borrowing authority. Congress may not only authorize the issue of paper money, but it may make such paper a legal tender in payment of debts. All the paper money now circulating has been issued under the authority of Congress.

The war powers. The Constitution confers on Congress the right to maintain an army and a navy, but stipulates that no appropriation for the support of an army may be made for a longer period than two years. This limitation was imposed in order to afford a safeguard against the maintenance of a large standing army. The framers of the Constitution were afraid of large standing armies such as existed in the countries of Continental Europe at the time. Great armies had been subversive of free government, but navies had not; hence no restriction is placed upon the time over which appropriations for a navy may be spread. Congress, accordingly, can adopt a naval program extending over a number of years.

The state militia. It was the original intention that each state should be permitted to maintain its own state

militia or national guard free from control by the national government in time of peace. At the same time it was felt that in case of national emergency the command of these militia organizations ought to be unified. Hence provision was made that the state militia should pass under the control of the national authorities whenever called into the service of the United States. For a like reason, the Constitution stipulates that Congress may make rules for the organization, arming, and disciplining of the state troops. This seemed essential in order that the armed forces of the states, when called into the service of the nation, should be a homogeneous body. An army made up of units which were not similarly organized, armed, and disciplined would not be an army at all.

Importance of the war powers. In time of peace the war powers of the national government are not of great importance, although they may involve large expenditures. It is in time of war that this power becomes capable of enormous expansion. During the World War, for example, the country discovered that the words, "to raise and support armies" (as used in the Constitution), gave Congress the right to control many things in the life and habits of the whole people. These words empowered the national government to regulate industry, to take over the railroads, and to pass laws which curtailed both freedom of speech and freedom of the press. There seemed to be almost nothing that the government could not do within the expansive limits of these "war powers"—even to the extent of prescribing what the people should eat, drink, or wear. In time of peace the armed forces of the United States and of the several states do not customarily exceed two hundred thousand men, but at the close of the World

War they reached a total of nearly five millions, counting all ranks and branches of the service.

Other powers of Congress. The five powers just mentioned—namely to tax, to borrow, to regulate commerce, to control the currency, and to maintain armed forces—these may be said to constitute the outstanding powers of the national government. But they are not the only ones that Congress has. There are at least a score of other congressional powers and some of them are of considerable importance, although limits of space do not permit of their being dealt with here. Congress, for example, has exclusive power to establish and maintain a postal service. By virtue of this authority it has established the country's elaborate network of post offices and delivery routes. Similarly, Congress has power to grant patents in the case of new inventions, and to grant copyrights for the protection of the authors of books and pictures. The national government alone can naturalize aliens or give passports to American citizens travelling abroad. Congress has authority to make laws relating to bankruptcy and to fix uniform standards of weights and measures throughout the United States. It regulates by law the whole system of Federal courts, for only the Supreme Court is established in the Constitution, all subordinate Federal courts being left to the discretion of Congress.

Should the powers of Congress be enlarged? The foregoing statement of powers does not give a complete inventory of all that Congress may do. Laws which seem to be outside this range of powers are passed by Congress at every session. Congress passes an immigration law, for example; but no power to regulate immi-

gration is given by the Constitution to the national government. How does this happen? The answer is that immigration is commerce (according to the Supreme Court) and Congress has power to regulate commerce with foreign countries. Hence it regulates immigration. So with other matters. The powers of Congress have been steadily enlarged, not by changes in the Constitution itself, but rather by the development of new conditions and by the broad interpretation of the Constitution which the Supreme Court has made in its various decisions. The simple words of the original document therefore give us a quite incomplete idea of the extent to which these powers have been stretched. Nevertheless, Congress has still too little power rather than too much. It might well be given authority to make uniform rules concerning the chartering of corporations, the employment of child labor, and the rights of aliens in the several states. It should also be given complete jurisdiction over the granting of divorces, so that an end might be put to the laxity which some of the states display in this regard. The framers of the Constitution are not to be blamed for having overlooked these things. Being human, they were without supernatural power to foresee developments a hundred years in advance. On the whole they did marvelously well. They stated the powers of the new national government in terms which the Supreme Court has found it possible to expand.

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QUESTIONS ON THE TEXT

1. What is meant by a government of *enumerated* or *delegated* powers? A government of *residual* powers? Name some powers of each class in the United States. What does the Tenth Amendment provide?

2. What was the basis on which powers were allocated to Congress in 1787?

3. What is the difference between *expressed* and *implied* powers?

4. What are the limitations on the taxing power of Congress and why were export taxes forbidden?

5. What is the national budget and how is it framed? What are the chief items in it?

6. What are deficiency appropriations?

7. How is the national borrowing power exercised?

8. How do banks act as agencies of national borrowing?

9. What is meant by "the power to regulate commerce"? What does the term "commerce" now include? Does it include regulation of traffic carried by airplane?

10. What are the military powers of Congress?

11. What is the "implied powers" clause? What is its value?

12. What powers are prohibited to Congress by the Constitution? What powers are prohibited to the states? What powers are prohibited to both Congress and the states?

13. Look up in an encyclopedia and be able to explain: (a) a writ of *habeas corpus*, (b) an *ex post facto* law, (c) letters of marque

and reprisal, (d) bankruptcy, (e) bill of attainder, (f) National Guard, (g) legal tender.

14. What are the powers of Congress over the national capital?

WRITTEN EXERCISE

What authorities in the United States have power to make laws covering the following matters:

1. A tax on all coal mined in Pennsylvania.
2. A tax on motor busses running (a) from Cleveland to Cincinnati; (b) from New York to Boston; (c) from Detroit to Toronto?
3. A tax on real estate rented by a national bank.
4. The incorporation of an electric lighting company.
5. The establishment of a new school, a college, or a university.
6. The sale of intoxicating liquor.
7. The taking of private property for public use without compensation.
8. Regulating radio broadcasting.
9. Establishing an educational test for voters.
10. Prescribing what uniforms shall be worn by members of the state militia.
11. Fixing the penalty for (a) burglary, (b) fraudulent use of the mails, (c) counterfeiting money.
12. Making rules for the seaworthiness of ocean vessels.

QUESTIONS FOR DISCUSSION

1. "The states have become mere administrative units in the nation." Is it true, or becoming true?

2. "During Cleveland's Administration in 1894, a tariff act was passed without the President's signature. It reduced the duties and provided for an income tax to make up the loss."

"During Wilson's administration in 1913, another tariff act was passed. It reduced rates on many articles and also included provision for an income tax.

The income tax of 1894 was declared unconstitutional while that of 1913 was held valid. Why? Would a law imposing a na-

ditional income tax on the salaries of congressmen be valid? On the salaries of Federal judges? On the President's salary? Justify your answers.

3. How were appropriations made by Congress twenty years ago? Has the Budget Act of 1921 made government more economical? Why?

4. In 1891 a series of crimes were committed in New Orleans by an Italian organization known as the Black Hand Society. The chief of police in that city was shot down; whereupon certain Italians were arrested and while in custody a mob of citizens forced the jail and lynched them. The Italian government demanded from the United States compensation for the families. Mr. Blaine, then Secretary of State, replied that the whole matter lay within the jurisdiction of the State of Louisiana and that the United States could not compel Louisiana to grant the compensation. Congress finally appropriated \$125,000 from the national treasury to pay it, although the national authorities were not to blame. Should there be some way of making the individual states fulfill their international obligations? How could it be done?

5. In Roosevelt's administration the state legislature of California proposed to pass a law forcing Japanese to attend separate schools in that state. Japan protested. The President appealed to California to refrain from passing the law and it was not passed. Could the Federal government have prevented the enactment of this law if California had gone ahead?

6. In 1913 California passed a law forbidding all aliens who were not eligible for naturalization to own agricultural land within the state. Japan again protested that this was an unjust discrimination against her citizens. Should jurisdiction over all foreign citizens in the United States be given to Congress lest some ill-advised action by a single state involve the whole country in a war?

7. What is the Pure Food and Drugs Law? Under what constitutional provision did Congress pass this law?

8. John Doe steals an automobile in Illinois and drives it to Nevada, where he obtains a Nevada license. Then he sells the car to a Nevada secondhand dealer. The latter finds the Illinois license

plates under the front seat of the car and has John Doe arrested. Where would he be tried? Could Congress provide that he be brought to trial in the Federal courts?

9. Chapter I, Article 7, of the Swiss Constitution contains this provision: "The cantons (states) may make treaties among themselves relating to legislation, administration or justice; nevertheless, they must bring them to the attention of the Federal government, which, if these treaties contain anything adverse to the Confederation or the rights of other cantons, is authorized to prevent their execution." If several Swiss cantons (or states) wished to build a big reservoir for water supply, how would they proceed? Can the states of the United States (in such a matter as the Boulder Dam) proceed in like manner?

10. In Chapter I, Article 34, of the Swiss Constitution there is this provision: "The Confederation has the right to establish uniform rules relating to the labor of children in factories, the hours of labor which may be required of adults, as well as the protection to be accorded to workmen in unhealthy and dangerous industries." Is there any such provision in our national Constitution? Has Congress ever tried to pass such laws? If so, under what authority and with what results?

11. In the Canadian Constitution all powers not given to the provinces (states) are reserved to the Dominion (federal) government. Is this better than the residual arrangement in the United States? Why?

TOPICS FOR ESSAYS

1. The Income Tax Laws of the United States (1863, 1894, 1913).
2. The Volstead Law and Its Enforcement.
3. The Interstate Commerce Commission: Its Organization and Work.
4. Copyrights and Patents in the United States.
5. The Powers of the House of Representatives Compared with Those of the German National Assembly (Reichstag).
6. The Division of Powers between the Federal Government and the Cantons (states) in Switzerland.
7. Residual Powers in the American and Canadian Constitutions.
8. The Immigration Laws of the United States.
9. America's Effort in the World War.
10. What has Resulted from the Absence of a Uniform Divorce Law?

SUBJECTS FOR DEBATE

RESOLVED:

1. That residual powers should go to the national government rather than to the states.
2. That income tax returns made by corporations and individuals should be open to public inspection.
3. That all inventions should be free from patent restrictions after ten years.

CHAPTER IX

THE PRESIDENT

1. The President of the German Republic is chosen by direct popular vote. If there are more than two candidates and if no one obtains a majority, a second election is held to decide between the two highest. Would you favor a similar system in the United States? It would do away with presidential electors and would prevent the election of a President when a majority of the popular vote is cast against him, as has sometimes happened (for example, in 1876 and in 1888). Give the reason for your preference.
2. Explain what would happen in the United States under the following circumstances:
 - (a) A new President is chosen at the polls in November, but dies before his formal election by the presidential electors. Would another popular election be held?
 - (b) A new President is formally elected by the presidential electors in January, but dies before the inauguration on March 4th.
 - (c) No candidate receives a majority for President or for Vice President at the hands of the electoral college. The House is unable to make a choice when March 4 arrives, but the Senate has chosen the Vice President.
 - (d) A Vice President, having succeeded to the presidency, dies in office. The Secretary of State is a naturalized citizen.
3. Should the President have a free hand in choosing members of his cabinet, without rejection of any such appointments by the Senate? Why?
4. Suppose that Congress should provide, in making the appropriations for new naval vessels, that the President must not order any of these vessels to European waters. Would such a restriction be binding? Why?

— **Importance of the Presidency.** Nearly a half century ago, an eminent English writer on American government spoke of the American presidency as “the greatest secular office in the world to which anyone can rise by his own merits.” If it was a great and powerful office fifty years ago, it is even more so to-day. There has been a steady increase in its prestige and authority. No European monarch or prime minister has powers so consequential or so far-reaching. For the President of the United States is the “first citizen” of the Republic, the head of the national government, the commander-in-chief of the army and navy, and the leader of his party.

How the President is chosen. The President is chosen by indirect election, through the intermediary of presidential electors. Briefly stated, the method of election is as follows: Each state is entitled to select, in such manner as its own legislators may determine, a certain number of presidential electors. The number is equal to the number of senators and representatives which the state sends to Washington. For example, if a state has two senators and eight congressmen, it is entitled to ten presidential electors. These electors are now, in all the states, elected by the people.¹ The election takes place on the Tuesday after the first Monday in November, every fourth year. Everybody speaks of “choosing a president” on that date, but in a legal sense it is only the presidential electors who are chosen at that time. The difference is of slight practical importance, however, because all the electors are pledged in advance; everyone knows for whom they are going to vote, and

¹In the early days, they were sometimes appointed by the state legislature. There is nothing in the national constitution which would prevent this being done to-day. The state legislatures have merely given the matter over to the people.

the choice of a new president is virtually made by the people at the polls.

The six steps in a presidential election. All in all, there are now six steps to be taken in the selection of these two executive officers, or seven steps in the event of a deadlock. *First*, the political parties in each state choose the delegates to the national party conventions.¹ This is usually done in the spring months before each presidential election. *Second*, the national conventions meet in June and nominate their respective candidates. *Third*, the political parties in each state prepare the lists of persons whom they seek to have chosen as presidential electors. *Fourth*, at the election in November the voters of each state choose the Republican list of electors for that state, or the Democratic list, or the Third Party list, as the case may be. *Fifth*, the electors meet in their respective states and vote for the candidates to whom they have been pledged. *Sixth*, the votes of these electors are opened in Washington before the two houses of Congress in joint session and the results announced.

Among these six steps, however, only the second and the fourth attract much public attention. The rest are formalities which usually pass unnoticed. In a word it is the people, not the electors, who really choose the President—which is what the framers of the Constitution did not want them to do.

Indecisive elections. But what if no one obtains a clear majority? In that case a seventh step becomes necessary. The House and the Senate (sitting separately) proceed to make their choices. The House, according to the Constitution, must make its selection of a President

¹For a description of the national party conventions, see pp. 106-108.

from among the three highest candidates. In so doing it votes by states, not by individual members; that is, the congressmen from each state determine among themselves how the vote of that state shall be cast. The candidate receiving the votes of twenty-five states, taken in this way, would be elected President. In the event of a deadlock for the vice presidency (that is, if no one obtains a majority of the electoral votes), the Senate makes the choice from among the two highest; but in the Senate the voting is by individual senators, not by states.

Why elections by Congress occur so infrequently. Ordinarily, of course, deadlocks do not occur. Not once in the last hundred years have the electors been unable to make the choice. As a rule a clear majority of the electors are either Republicans, pledged to the candidates who have been nominated for President and Vice President at the Republican national convention; or a majority of them are Democrats, pledged to the nominees of the Democratic national convention. As such they vote solidly for their own party candidates and that settles the matter, there being only two major political parties under normal conditions. But when it happens that there are three strong parties in the field, there is an obvious possibility that no one of them will secure control of a clear majority of the electors.

A deadlock may arise in another way, as was shown in the election of 1876. At that election there were some states in which both lists of electors, Republican and Democrat, claimed to have been elected by the people. Congress, through a special commission, decided that the Republican electors were the ones who had legally been chosen, and their votes elected President Hayes. Later,

a statute made provision that in all future disputes of this sort each individual state should decide which group of electors is legally chosen.

Minority presidents. Under the present method of election a President may really be chosen by a minority of the voters, even when there are only two candidates in the field. That has sometimes happened, as in the election of 1888, for example. The reason for this is that the size of a candidate's majority in each individual state affects the total popular vote but does not affect the electoral vote. For example, if New York State goes Republican by one thousand votes at the polls, the entire 45 Republican electors are chosen just as surely as if their popular majority had been a million votes.

Qualifications of the President. No one can be elected President or Vice President except a natural-born citizen of the United States. It is also required that both shall be at least thirty-five years of age at the time of their inauguration and shall have been resident within the United States for fourteen years preceding. This last provision requires legal residence only. It does not necessitate the actual presence of the candidate within the boundaries of the United States for the entire fourteen years preceding the election.

The President's term. The newly elected President and Vice President are inaugurated on the fourth day of March following their election. The President takes an oath which is prescribed by the Constitution. Both President and Vice President hold office for four years. The Constitution does not limit the number of terms which either may serve if reelected. Many Presidents have been chosen for a second term and have served the

full eight years; but no President or Vice President has thus far been chosen for a third term. Washington declined a third term, not because he was opposed to it in principle, but because he was feeling "the increasing weight of years." Jefferson also might have had a third term, but declined. So there has grown up an unwritten rule against third terms. Some day this unwritten rule may be broken, but it is not probable.

The presidential succession. In case the President dies, or resigns, or becomes unable to perform the duties of his office, the Vice President steps into his place. The Constitution merely provides that in such cases the functions of the President shall "devolve upon" the Vice President. It does not say that he shall become President or assume the title of President. That, however, is what Vice Presidents have done. When the occasion arises, they become Presidents in name and in fact, not merely *acting* Presidents. In case both the presidency and the vice presidency fall vacant, there is a law of 1886 which governs the succession. It provides that the Secretary of State shall be the next in line; or, if he be ineligible, the Secretary of the Treasury, and so on through the cabinet in order of seniority. On no occasion, however, has this provision been utilized. No President has ever resigned, and no President has ever died in office at a time when the vice presidency happened to be vacant.

The President's powers: their general nature. The President is the chief executive officer of the nation. His actual powers are very great, not only because he is endowed with a wide range of authority by the Constitution, but for the reason that additional powers have been given to him by acts of Congress. Likewise, some of his powers

are based on custom and some of his influence comes from the fact that he is the recognized leader of his own political party. It is difficult to set down, in the pages of any book, just what the President can or cannot do. Much depends on the force of his own personality, and even more depends upon whether his political party controls a majority in both houses of Congress. A strong President, with a legislative majority behind him, can do things which a weak, compromising chief executive without a majority at his back, would fail to do. Something also depends on the times. During a period of war all nations demand strong leadership and in the United States this responsibility devolves upon the President. His powers are inevitably widened in times of emergency.

He is not merely a chief executive. There is also a difference between the theory and the practice of the powers which belong to the President's office. In theory, the President is an executive officer with no legislative authority. He is supposed to execute the laws but to have no share in making them. These two functions, executive and legislative, are assumed to be vested in separate hands; in other words, the American national government is said to be based on the principle of separation of powers. But in practice this principle is not strictly applied. The President, when he is a strong President, has a real share in the making of the laws. He recommends to Congress that certain laws be passed. President Wilson, for example, urged Congress to pass various statutes, and Congress did what he asked—in most cases. Likewise the President issues many executive orders (as they are called) which really have the force of law. So whatever the theory of the President's office,

You must not leave him out of account when you are considering the actual process of lawmaking.

Presidential powers enumerated. Let us first group the powers of the President under seven heads and then explain them one by one. They may be classified as follows: (a) powers in relation to the making of laws; (b) the power to execute the laws; ~~(c)~~ the power to appoint and to remove administrative officials; (d) the power to direct foreign relations and to make treaties; (e) the war powers; (f) the power of pardon; and (g) certain powers which accrue to him as the recognized leader of his party.

(a) **Powers in relation to the making of laws.** It is the duty of the President to inform Congress from time to time concerning the affairs of the nation. He may do this by sending written messages, or by addressing Congress in person. In these messages and addresses he may (and often does) point out to Congress the need for new laws or for amendments to the existing laws. The most important measure which Congress considers each year, the budget, is submitted to it by the President. If he deems it necessary, the President may call Congress together in special session to act on his recommendations. Congress, of course, is under no obligation to do what the President recommends, but when he and a majority of the congressmen belong to the same political party (as they usually do) it is inevitable that the President's recommendations shall carry much weight.

The veto power. And if Congress disregards the President's recommendations, he has his own weapon of defence, known as the veto power. Every bill and every joint resolution must be submitted to him after passing



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PRESIDENT HOOVER SIGNING THE AGRICULTURAL RELIEF ACT

~~both~~ houses of Congress.¹ Within ten days thereafter ~~the President may sign it, in which case it goes into effect.~~ Or he may return it to Congress without his signature. In that case it does not go into effect unless both houses of Congress again pass the bill by a two-thirds majority in each house. When this is done, the bill is said to be passed "over the President's veto." But what if the President neither signs the measure nor returns it within the ten days? In that case the Constitution provides that the measure shall go into effect without the President's signature, unless Congress adjourns before the ten days expire, in which case it does not become effective. When a measure fails in this last-named way, it is said to have received the "pocket-veto."

Extent of its use. The veto power of the President has been used very little by some presidents and to a much greater extent by others. A good deal depends on the relations existing between the President and Congress. When these relations are harmonious there is rarely any occasion to use the veto power; but when the executive and legislative branches of the government are at odds, the veto power becomes the President's instrument for holding Congress in check. When the President vetoes a measure, however, he must reject it as a whole. He cannot veto one portion of it and let the rest go through. For example, when a bill makes several appropriations for expenditure, some of which he approves while disapproving others, the President cannot strike out the latter and accept the rest. Hence the President, being unable to veto a part of a bill, is often forced to

¹There is one exception to this statement; namely, a joint resolution which proposes an amendment to the Constitution. Concurrent resolutions which do not have the force of law are never submitted to the President.

take the chaff with the wheat. He must sometimes choose between vetoing a good measure with a few bad provisions, or signing a bill which he approves only in part.

(b) **The power to execute the laws.** The Constitution enjoins the President to "take care that the laws be faithfully executed." Congress makes the laws but the executive branch of the government is charged with the duty of putting them into effect. And the courts have the function of supporting this executive duty so long as it is properly exercised. Of course the President does not personally execute the laws of the land. This work is delegated to the ten members of his cabinet and to various boards such as the Interstate Commerce Commission. One and all, however, these officials and their subordinates are responsible to the President. He appoints them and can remove them at will. The President has the duty of enforcing the laws—not only in the case of individuals and corporations but even against a state of the Union. He can use the armed forces of the United States for this purpose if it becomes necessary.

(c) **The power of appointment and removal.** The President appoints all the higher officers of the government, including members of his cabinet, judges of the Federal courts, ambassadors, postmasters, etc., subject to confirmation by the Senate. When the President has occasion to fill one of these positions, he transmits a name to the Senate and it is at once referred to the appropriate committee of that body; *e.g.*, the judiciary committee, or the foreign-relations committee. This committee, in due course, reports that the appointment ought to be confirmed or rejected, as the case may be, and the Senate

then votes on the matter. A mere majority of the senators present is sufficient to confirm an appointment made by the President. This is worth noting, because a two-thirds majority is needed to ratify treaties.

Confirmation by the Senate. As a rule the Senate does not withhold its consent in the case of appointments to the cabinet. It confirms such appointments without hesitation on the ground that the President ought to have a free hand in the selection of his own advisers. Nevertheless, on a few occasions the Senate has refused its consent to such appointments. This has happened only twice in the last hundred years. As respects all other appointments submitted to it by the President, the Senate feels at liberty to confirm or refuse as it deems best. In most cases it confirms. When it declines confirmation, the reason is not always the unfitness of the person named by the President. More often the Senate's refusal has been dictated by the "rule of senatorial courtesy," as it is called. This unwritten custom means that if the President appoints to a position in any state someone who is not satisfactory to the senators from that state (provided they belong to the same political party as the president), the Senate will ordinarily refuse its consent to such appointment. The rule of senatorial courtesy is not a hard and fast one, however; nor can it be made so, because much depends upon the vigor with which the President urges an appointment and upon the influence of the senators concerned.

Subordinate appointments. As for the less important appointments, the Constitution provides that these may be vested by Congress in the President alone, or in the heads of departments, without the necessity of confirmation

by the Senate. This has been done in many cases. The vast majority of minor positions on the payroll of the national government are now filled under the civil service rules. The workings of this system, in both nation and states, will be explained in another chapter.¹

Removals. The matter of removals from office is not mentioned in the Constitution except in the case of officials who are convicted on impeachment. But the President, at an early date, assumed the power to remove any appointive officer of the national administration, and it is now well settled that this authority legally belongs to him. A recent decision of the Supreme Court made it clear that this power of removal cannot be limited by any action of Congress. In other words, when Congress establishes a new office, it cannot restrict the President in his authority to remove the official who is appointed to this office.

(d) **The conduct of foreign relations.** The President conducts the relations of the United States with all foreign countries. For this purpose the United States is represented at the capitals of all important foreign countries by diplomatic officials who are known as ⁽¹⁾ambassadors or ministers, according to their rank. Likewise these foreign countries are represented by diplomatic officers at Washington. Through the Department of State, the President carries on diplomatic relations and ⁽²⁾negotiates treaties. But treaties do not become effective until they have been submitted to the Senate and have been approved by a two-thirds majority there. This power to conduct foreign relations is one of the greatest importance, for the issue of war or peace may depend upon it at any time.

¹See pp. 375-376.

(e) **The war powers.** It is provided in the Constitution that the President shall be commander-in-chief of the army and navy. He appoints all the officers of the army and navy of the United States. Officers of the state militia, when not in the service of the United States, are appointed as the laws of the several states may direct. Congress votes the appropriation for the army and navy, but the expenditure of this money is in the hands of the War and Navy Departments, both of which are under the President's control. Congress also makes the general laws under which the military and naval forces are organized; likewise it determines the organization and discipline of the state militia. Through his control over the nation's armed forces, the President may virtually bring about a state of war, leaving Congress no option but to recognize this by the issue of a formal declaration. The war powers of the President have never been precisely defined; they expand with the need of the situation in war time. President Wilson, during the World War, showed that these powers are of enormous extent. It is not that the Constitution makes them so, but when a great emergency arises, Congress is always willing to give the President whatever authority he asks for.

(f) **The pardoning power.** The President is authorized to grant pardons in the case of any persons convicted of crime in the courts of the United States. It should be pointed out, however, that this power of pardon does not extend to convictions that have been made by the state courts. In such cases, either the governor of the state or a state board of pardons exercises this authority. The effect of a pardon is to render a convicted person immune from all punishment for his offence. With the power to

pardon comes the right to grant reprieves and commutations of sentences. A reprieve postpones the execution of the sentence, while a commutation lessens the amount or the severity of the punishment. When the President grants a general pardon to a large number of persons for a specific offence, this is known as an *amnesty*. One important limitation upon the President's pardoning power should be pointed out; namely, that he can grant no pardon to any person who has been convicted on impeachment. All applications for pardon are presented to the Department of Justice, and the President customarily makes his decision after hearing the recommendation of this department.

(g) **Powers as the leader of his party.** All the foregoing powers are vested in the President by the Constitution and the laws of the United States. There is a fifth class of powers, or to speak more accurately a form of official influence, which the President possesses by virtue of his position as leader of his own political party. Bear in mind that every President is elected on a party platform which contains various pledges. As the recognized leader of his party, it is the President's duty to see that these pledges are fulfilled. The whole country looks to the President for leadership and guidance in legislation, but no President can carry out a program of legislation without the coöperation of Congress.

The President's immunities. The President, during his term of office, is immune from all control by the courts. There is only one tribunal before which he can be called to answer for any offence, and that is the Senate sitting as a court of impeachment. The reason for this presidential immunity is found in the fact that the President is the head

“of a coördinate branch of the government. A more practical reason is found in the fact that he has an unlimited power of pardon except in cases of impeachment. Hence there is no restraint or punishment that the courts might impose upon him if he were subject to their power. A decision of the courts relating to him could at once be removed by a stroke of his own pardoning power.

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QUESTIONS ON THE TEXT

1. Explain the various steps in the choosing of a President. Which ones are most important?
2. What happens in case two lists of electors claim to have been elected from any state?
3. Is it true that any boy born in the United States is eligible to be President? What other qualifications besides citizenship by birth must a President have?
4. What is a *minority* President?
5. It is said to be a provision of the “unwritten constitution” that no President may serve more than two terms. Do you think this a wise restriction? Why?
6. Classify the following powers of the President, indicating in each case whether the power is *executive* or *legislative*:
 - (a) Serves as commander-in-chief of the army and navy.

13. In 1927 a Farm Relief Bill was vetoed by President Coolidge, and failed to pass Congress by the necessary two-thirds vote. Is this "one-man legislation"? Why do you think so?

14. In 1867 Congress passed the Tenure of Office Act which forbade the President to remove any officer in the appointment of whom the consent of the Senate was required. Was this Act constitutional? What power of removal does the President now possess?

15. In Article II, Sec. 2, par. 1, the Constitution reads: "He (the President) may require the opinion in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." What is the significance of this provision?

16. President Roosevelt during his term as President visited the Panama Canal Zone. President Wilson went to Paris and remained there for several weeks during the peace negotiation after the World War. Who performed the executive functions while the President was away? Did the cabinet meet? If so, who presided?

17. In the election of 1876 South Carolina, Florida, Louisiana, and Oregon each sent in double sets of electoral returns. Congress appointed a special commission to decide which returns were valid. Did Congress have the right to do this? Why was a special commission necessary?

18. Because of extremely warm weather in Washington, a President calls his cabinet to meet at his summer home in Maine. Is business done at such a meeting constitutional? Could he call the Senate in special session to meet elsewhere than in Washington?

TOPICS FOR ESSAYS

1. The Swiss Federal Council as a Plural Executive. 2. The President of the French Republic. 3. A Comparison of the American President's Powers with Those of the English Prime Minister. 4. The Election of John Quincy Adams by Congress in 1824. 5. The Hayes-Tilden Disputed Election of 1876. 6. The Third-Term Tradition: How It Arose and Is It Desirable to Maintain? 7. The Impeachment of President Johnson. 8. The President's Social Duties. 9. Great Americans Who Have Tried for the Presidency and Failed.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the President of the United States should have a seven-year term and should not be reëligible.
2. That the multiple executive in Switzerland is a more democratic arrangement than the single executive in the United States.
3. That the President should be chosen by direct vote of the people.

CHAPTER X

THE FEDERAL COURTS

1. Many years ago the sewage of Chicago was emptied into Lake Michigan; but for sanitary reasons the city decided to build a drainage canal which would carry it to the Illinois River and thence to the Mississippi. The city authorities of St. Louis protested this action and desired to have it stopped by court decision. If St. Louis brought proceedings against Chicago, in what courts would the case be tried? The suit, as actually brought, was entitled *Missouri vs. Illinois*. In what court was it tried?
2. The Gotham Cloak Company is a company with a New Jersey charter, doing business in New York City. A creditor brings action to have the company declared bankrupt and its assets divided. In what court would he bring his case? What would this court do if it decided in favor of the creditor?
3. The Rhode Island legislature passes a law imposing an income tax on the salaries of all postmasters within the state. One of these officials declines to pay the tax on the ground that it is unconstitutional and is arrested by the state authorities for non-payment. How can he get released?
4. The collector of customs at the port of Baltimore makes the ruling that tomatoes are fruit, not vegetables, and collects duty accordingly. The importer desires to appeal from this ruling. How does he do it? If not satisfied with this decision, what further step can he take?
5. The following amendment to the Constitution is proposed: "When any Federal law is declared unconstitutional by the Supreme Court, it shall be within the power of the Congress to annul such a decision by the procedure now employed in passing a bill over the President's veto." Give your opinion of this proposal.

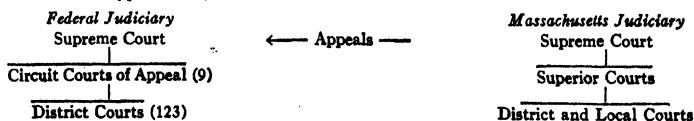
Our dual judiciary. In most countries there is only

the set of courts, hence all cases take their course through the same tribunals. But in the United States there are two sets of courts running parallel from lowest to highest. First, there is the state judiciary. Each state has its own courts and its own judges with the right to decide all cases which come within a certain field. There are lower state courts, superior courts, and sometimes a court of appeals as the court of last resort in the state. Second, there is the Federal judiciary, made up of courts which have jurisdiction over a different field; and here also there are three gradations—district courts, circuit courts of appeal, and the Supreme Court of the United States.¹

How jurisdiction is divided. What cases come up in the state courts, and what matters do the Federal courts decide? The Constitution makes the division of power by giving certain cases to the Federal courts, and leaving the state courts to handle all the rest. Here is the provision which covers this matter:

The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

¹The parallel jurisdiction may be illustrated by the following diagram (taking Massachusetts as a typical state):



The foregoing quotation from the Constitution may seem complicated, but in general it means two things: First, that the Federal courts take a case whenever it concerns any provision of the national Constitution or any law made by Congress, or any treaty that has been ratified by the Senate—no matter who the parties to the suit may be. Second, it means that the Federal courts have jurisdiction when the suitors are states of the Union, or when the corporations or individuals concerned in the suit are from different states—no matter what the nature of the case may be. In short, it depends upon what the controversy is, or who the contesting parties are.¹

An illustration. When any dispute arises between individuals or corporations, the lawyers who bring the suit determine whether the matter is one for the Federal or the state courts to hear. This they do by considering whether the controversy comes within any of the clauses named in the constitutional provision mentioned. If they find that it does, the suit is usually commenced in the Federal courts; otherwise it is begun in the state courts. For example, if the suit has to do with the infringement of a patent, it will come up in the Federal courts because the Constitution gives Congress jurisdiction over patents and copyrights. But if the suit has to do with the ownership of land, it would ordinarily come up in the state courts. If, however, the land happens to be situated in Alaska, the case would then be within Federal jurisdiction because Alaska is a territory and territories are placed by the Constitution under the control of the national government. Suppose, on the other hand, that there is a dispute

¹By the terms of the Eleventh Amendment, one state may not be sued in the Federal courts by any individual from another state. It has also been provided by law that the Federal courts do not take jurisdiction over suits between citizens of different states unless the amount at issue is above a certain minimum.

about the payment of an ordinary debt. If both parties are citizens of the same state this dispute would be decided by the state courts; but if they are citizens of different states,¹ and the amount involved is sufficiently large, the case can be taken to the Federal courts.

Appeals. Nearly all suits begin in the lower courts, whether Federal or state, and if the decision is not satisfactory to either party, it can usually be carried on appeal to a higher Federal or state court as the case may be, until finally a very small proportion of these appeals reach the Supreme Court of the United States. The great majority of cases begin in the state courts and end there. Do not get the idea that any dispute, of whatever character, can be appealed to the Federal Supreme Court if one of the suitors desires it. As a rule the decision of the highest state court is final in cases arising under the state laws, and an appeal to the highest Federal court can only be taken when some point requiring an interpretation of the national Constitution is raised.

Why we have two sets of courts. Under the Articles of Confederation there were no Federal courts, but only state courts. Hence there were no neutral judges before whom citizens of different states could bring their controversies. This was regarded as a serious defect in the old judicial system. Moreover, there were no courts whose prime duty it was to enforce the acts of the Congress. The framers of the Constitution decided to change this situation. They felt that since the Congress of the United States was to make laws, it should be given its own courts to enforce these laws, and should not be dependent on the

¹A corporation is ordinarily deemed to be a citizen of the state from which it has obtained its charter.

coöperation of the state courts. Accordingly, the Constitution made provision for a Federal Supreme Court and for such subordinate Federal courts as Congress might decide to establish. And Congress has established a complete system of Federal courts, with the Supreme Court at the top and the district courts at the bottom.

The Supreme Court of the United States. Go into the Capitol at Washington any week day from October to June, and on the right of the main corridor you will find a semicircular room which was used by the Senate in the days when that body was small. You will be interested to see a group of sedate-looking men, robed in silk gowns, sitting on a raised dais, listening to the arguments of lawyers who stand on the floor below them. This is the Supreme Court of the United States, the highest court in the land and the most powerful tribunal in the world. It consists of a chief justice and eight associate justices, all of them appointed for life by the President with the consent of the Senate. They cannot be removed from office except by impeachment.

The justices sit in a row, with the chief justice in the center and four associate justices on each side of him. There is no jury, and as a rule there are no witnesses. For the most part the court merely hears the arguments of attorneys on points of law in cases which have been appealed. Under certain circumstances, however, the Supreme Court may hear a case in the first instance, that is, without its having been first heard in a lower court. In the words of the Constitution it may exercise this original jurisdiction in cases affecting "ambassadors, other public ministers, and consuls," and in controversies between two states. When one state sues another the

suit goes directly to the Supreme Court of the United States and does not begin in the lower Federal courts.¹

Sessions of the Supreme Court begin at twelve o'clock each week day and continue, with a brief interruption for luncheon, until late in the afternoon. These sessions are public. Every Saturday morning, however, the court meets behind closed doors to agree upon its decisions, and on Mondays the decisions are publicly announced. Thereafter the decisions are printed in full in numbered volumes so that one can refer to them by volume and page.

The Supreme Court's power. The Supreme Court is commonly said to be the most powerful tribunal of the world. This is because it has assumed the right to nullify as unconstitutional, laws which have been passed by Congress or by the state legislatures. Where does the Supreme Court get this authority? It is not expressly given to the Court by the Constitution. The framers of the Constitution merely took for granted that the judges would decline to enforce any law if they believed it to be in violation of any provision in the Constitution, for the Constitution declared itself to be "the supreme law of the land." In 1801, therefore, when a case came up involving a law which the Supreme Court believed to be a violation of the Constitution, the justices declared the law void, and since that time they have held many laws unconstitutional.

Is the Supreme Court's power justified? To some minds this power to declare laws unconstitutional may

¹A Supreme Court decision is cited in this way: *Hammer vs. Dagenhart*, 247 U. S. 251; or *Heald vs. The District of Columbia*, 259 U. S. 114. It may be well to explain briefly some of the terms commonly used in connection with the law and the courts. The parties to a suit at law are usually known as the *plaintiff* and the *defendant*. A *criminal case* is one in which some crime is charged; in a *civil case*, the issue concerns the private rights of individuals, e. g., when a man is sued for debt. A court has *original jurisdiction* where cases come before it in the first instance without having already been heard before some other court; it has *appellate jurisdiction* when cases come up from some other court on appeal.

seem undemocratic and dangerous in the hands of a small appointive body. Nine men (not elected by the people but appointed for life) may by majority vote set aside a law that has been passed by both houses of Congress with the President's approval, or one that has been passed by the legislature of any state. Five justices of the Supreme Court thus have the right to nullify what has been done by the representatives of the people. This might at first sight seem a very undemocratic arrangement, but it is a necessary one arising from the very nature of constitutional democracy. It is necessary because American government, in both the nation and the states, is based upon a division of powers. Congress has some powers; the state legislatures have others. There must be some body with the right to decide when differences of opinion arise with respect to the scope of these powers. For if there were not, one would encroach on the other. Congress would pass laws outside the scope of its authority; and so would the state legislatures. Every legislative body naturally tries to increase its own powers and there would soon be conflict if there were no impartial umpire. The Supreme Court serves as umpire when disputes arise concerning what the provisions of the Constitution mean.

Some examples of the Supreme Court's work as guardian of the Constitution. The Constitution, for example, provides that Congress shall pass no bill of attainder, that is, a law condemning a man without trial. If Congress were to enact a measure of that sort, the Court would nullify it. Again, the Constitution stipulates that no state shall make any law depriving people of their property without compensation. If any state

legislature were to enact such a law, the Supreme Court would declare it to be unconstitutional and void. Or, again, Congress is given, by the national Constitution, the power to regulate interstate commerce. Suppose a state legislature enacts a law imposing a tax on all goods passing through its own territory en route to other states. The Supreme Court would intervene to prevent this infringement upon the constitutional powers of the Federal government. Finally, the Constitution provides that the salary of the President shall not be changed during the period for which he has been elected. If, therefore, Congress were to cut down the President's salary, for any reason, the Supreme Court would step in and prevent this invasion of the President's constitutional right.

The Supreme Court's power is not a veto power. Now all this does not mean that the justices of the Supreme Court have the right to *veto* any Federal or state law at their discretion. They have nothing to do with the wisdom or unwisdom of any measure—nothing to do with the question as to whether it is a good law or a bad one. The only issue they have to decide is whether it violates any provision of the Constitution. If they find that it does, they declare the law invalid, no matter what body has passed it. If, on the other hand, they find that the law does not violate any provision of the national Constitution they uphold and enforce it, no matter what their own personal opinions as to the expediency of the law may be. They do not act as lawmakers, or as amenders of laws, nor do they *veto* laws in the ordinary sense of the term. They merely guard the Constitution. And so long as American government is based upon written constitutions, there must be somebody with authority

to see that what is in these constitutions shall be respected by everyone, from the President and Congress down. So long as we have a "supreme law of the land" there must be some body vested with power to make sure that it is supreme—in other words some court with authority to say to all public officials and legislative bodies: "Thus far shall you go and no farther; here is the point where the Constitution sets a limit to what you can do." Otherwise every official and legislature would reach out for more power and the ordinary citizen would have no constitutional protection at all.

The popular attitude toward the Supreme Court's power. Decisions of the Supreme Court are sometimes unpopular. People who are eager for reforms, when they see the Supreme Court holding up measures which Congress has passed to protect women or children, or the weak, or the poor, are in the habit of crying out that the court is a barrier to progress and that its powers ought to be reduced. More than a hundred years ago there was a great outcry when the Court held, in the case of *McCulloch vs. Maryland*, that the states had no right to tax any function of the national government. In 1894 there was another uproar when the Court decided that Congress could not impose a direct tax on the income from land without apportioning this burden among the states according to population as the Constitution requires. Quite naturally, those who have worked hard to get a law through Congress, or through a state legislature, do not like to see all their labors brought to nothing by a few silk-robed justices. But what is the alternative? Shall we let each legislature decide for itself whether it will observe the Constitution or not? Is there any better

method of securing the strict observance of its rules than by setting up an impartial body of distinguished jurists who hold office for life and have no political ambitions to gratify? True enough they will sometimes feel bound by their oath of impartiality to make unpopular decisions; but do we propose to abolish jury trials because juries sometimes render unpopular verdicts? It is to be borne in mind, moreover, that although a decision may be unpopular when it is rendered, the people in time come to see it in a different light. No one to-day regrets the decision in *McCulloch vs. Maryland* although it created such a furore in 1819.

The subordinate Federal courts. The subordinate Federal courts are known as district courts and circuit courts of appeal. The country is divided into eighty-five judicial districts, in each of which there is a United States district court (and sometimes two or three district courts), each with a judge, a marshal, and a United States attorney, all appointed by the President. Above these courts are the circuit courts of appeal. There are ten of them, each having jurisdiction within a certain section of the country. Normally a circuit court of appeals has three judges appointed by the President together with its own court officials. These courts derive their name from the fact that they go *on circuit*; that is, they move about from one large city to another within their respective sections of the country, holding sessions in each. In most cases they have final jurisdiction. Only in exceptional cases can their decisions be appealed to the Supreme Court. In certain designated matters, however, an appeal may be taken from a district court to the Supreme Court without going through the circuit court—for example,

cases brought by the United States against corporations for violation of the antitrust laws.

Special Federal courts. Mention should likewise be made of various special courts which form part of the Federal judiciary. One is the Court of Claims which hears anyone who has a claim against the United States. If the court finds the claim well founded, an appropriation to pay the individual suitor is then made by Congress. There is also a Customs Court and a Court of Customs and Patents Appeals, to decide controversies arising out of the administration of the tariff laws, such as the overvaluation of imports by the customs appraisers, or the wrong classification of goods for duty or the exaction of a higher rate than the tariff schedules warrant. The courts of the District of Columbia, Hawaii, Alaska, and the insular possessions, are also Federal courts established by Congress; but they are not part of the regular national judiciary system.

How decisions of Federal courts are enforced. The Federal courts enforce their own decisions. Each district court has a marshal and several deputy marshals, who are the court's enforcement officers. They serve all warrants and writs, make arrests, and see that penalties are carried out. They are under the general supervision of the Department of Justice at Washington. The Federal government has its own prisons and penitentiaries for the custody of those who are sentenced to imprisonment by the Federal courts. Decisions of the Federal courts can ordinarily be enforced by their civilian officers; but if necessary the national government can use military force to ensure compliance with the decrees of its own courts.

The Federal courts and the law. Having outlined

the organization and powers of the Federal courts, the question next arises: What kinds of law do American courts administer? We often speak of the courts as administering *justice*, and it is no doubt true that their decisions usually possess the quality of justice; but what courts really administer is *the law*. The law may be just or unjust—and it is very difficult, if not impossible, for any court to wring justice out of an unjust law. What we call *the law* in its wider sense, moreover, is not a single, unified body of rules, printed in a law book. The law is made up of different branches such as common law, statutes, municipal ordinances, and equity.

The common law. Of these, the common law consists of various time-honored usages, some of which go back many hundreds of years. The common law began its growth in mediæval England at a time when there were very few written rules and the courts found it necessary to decide cases in accordance with the customs of the people. Gradually these decisions became uniform, one court following the example of another, until this body of customs as interpreted by judicial decisions became *common*, or universal, throughout the whole realm of England, although it had never been enacted by any action of Parliament. Thus the rule developed that no man should be compelled to testify against himself, that mere hearsay should not (within certain exceptions) be received as evidence, that all witnesses should be put upon oath, that questions of fact should be decided by juries, that agreements to restrain trade in an unreasonable manner were punishable, and so on.¹

¹These rules were gathered together and put into written form by various commentators, chief among whom were Glanvil, Bracton, Coke, Littleton, and Blackstone. Blackstone's *Commentaries on the Common Law of England*, compiled before the American Revolution, is still the standard work known to every lawyer.

For several centuries the common law developed in this way and finally it was brought by the English colonists to America where it speedily took root and was administered by the colonial courts.¹ After the Revolution it was continued and it still remains the groundwork of the law in all the states except Louisiana. People sometimes think of it as *unwritten law* because it was such in early days; but the common law is now printed in books, mostly in the form of court decisions. Indeed the common law is constantly being developed and modified by these decisions. In a word the common law is a gradual growth and not the result of legislative action.

Statutory law. Second, there is statutory law. This includes the laws that have been made by action of the people through their representatives in Congress and in the state legislatures. Laws enacted by the people through the initiative and referendum are also statutory law. So are the ordinances and by-laws made by city councils or county commissioners or town authorities. All these various statutory enactments supplement or alter the common law. They differ from it in that they are definitely enacted, at a stated time, by some lawmaking authority. But until a statute is passed affecting any question, the common law prevails. And whenever a statute conflicts with a provision of the common law, the statute prevails. But when either common law or statutes conflict with the Constitution, the Constitution prevails. Enormous numbers of statutes are enacted each year by Congress and by the legislatures of the forty-eight states; while countless ordi-

¹The colonists looked upon the common law as a bulwark of individual freedom. Edmund Burke, in one of his speeches, mentioned as a significant indication of the colonists' familiarity with the common law the fact that almost as many copies of Blackstone had been sold in America as in England. The Declaration of Rights adopted by the First Continental Congress in 1774 spoke of the colonies as entitled to all the provisions of the common law.

ances and by-laws are annually passed by local councils.

Where the statutes may be found. Statutes passed by Congress are printed in the Statutes-at-Large, one or more volumes for each session.¹ State statutes are printed in volumes known as *Session Laws*, or simply as *Laws of Pennsylvania*, or *Acts and Resolves of Massachusetts*. From time to time, usually every ten years, these state laws are revised, consolidated into one general compilation, and usually published as the *Revised Statutes*, or *Revised Laws*. When all the laws relating to a certain subject (for example, criminal law, or civil procedure, or municipal affairs), are brought together into one compilation, this is known as a code. Thus we speak of the *Criminal Code*, or the *Code of Civil Procedure*, or the *Political Code*. Some of the states have such codes while others do not.

Equity. The Constitution speaks of "cases at law or equity." What is equity? Contrary to the common impression this term does not connote something that is more just than the law; something which has its roots in the conscience of the judge rather than in the law books. Equity, as administered in the courts, is merely a branch of the law in its wider sense. It consists of formal rules which the courts apply in certain cases without any more discretion than they have when they apply the rules of common or statutory law. These rules of equity are written in books, just as the rules of law are, and they are about as precise.

Its origin. The origin of equity is an interesting story which cannot be narrated here except in the briefest way. In early England there grew up, side by side with the common law, a set of unwritten rules administered by the

¹These are revised and consolidated from time to time.

chancellor, who was called the "keeper of the king's conscience" and to whom the people could appeal for relief when they felt that they had not received justice in the courts of common law. At the outset the chancellor, whose office eventually grew into a Court of Chancery, decided every case on its own merits; but in due course all cases of the same kind came to be decided in the same way and thus a set of rules or principles was gradually formulated. With further growth, these rules of chancery or equity were gathered together, arranged logically, put into written form, applied by the English courts, brought to America in colonial days, and retained after the Revolution; and they continue in force at the present time.

The differences between law and equity. The differences between law and equity are so technical that even lawyers sometimes fail to understand them thoroughly. It would take a whole volume to explain them in detail. But in general, equity applies only to certain classes of civil controversies and never to criminal cases; the procedure in equity is simpler than in lawsuits; a court of equity sits without a jury (save in very exceptional instances); the evidence in equity cases may be submitted in written form; there is usually no oral examination of witnesses; and the judgment takes the form of an order or decree, not an award of damages. Thus a court of equity may issue an injunction ordering an individual or an organization to refrain from doing certain things that would cause loss or injury to the property of others. If such an injunction is disobeyed, the disobedience is punished as contempt of court. The same courts, as a rule, administer both law and equity.

Appointment and tenure of Federal judges. The judges

of all the Federal courts are appointed by the President with the confirmation of the Senate. They hold office for life or until they choose to retire on reaching the age limit. No one is ever appointed to a Federal judgeship unless he has had adequate training in the law, and in many cases the newly appointed judges in the Federal courts have already served as judges in the state courts. A Federal judge cannot be removed from office except by impeachment, and his salary cannot be diminished so long as he continues in office. The optional retiring age for Federal judges has been fixed at seventy, and on reaching that age a Federal judge who has served at least ten years may retire on full salary. Judges of state courts are in most cases elected by popular vote; but no judge of any Federal court is ever chosen in that way. Likewise the officials of state courts are everywhere elected; but marshals, clerks, United States attorneys, and other officers of the Federal courts are in all cases appointed by the President. They are subordinates of the Attorney-General at Washington and may be given instructions by him. The President cannot remove a judge in any Federal court, but the court officials are subject to removal by the President at any time.

Court procedure. The Federal district courts hold their sessions at a fixed place, but the circuit courts of appeal, as their name implies, hold their sessions from place to place in the area covered by the circuit. The Supreme Court of the United States always sits at Washington, never at any other place. Sessions of the Supreme Court are held throughout the year from October to June; then the court takes a long vacation. The Chief Justice always presides, and the cases come up in accordance with a

docket or list on which they are arranged in order. When a case is reached on the docket, the clerk of the court calls it and the court thereupon listens to the arguments of the attorneys on both sides. After these addresses are finished, the attorneys may file what are known as *briefs* or written arguments which are studied by the judges after court hours. In due course the case is discussed by the justices behind closed doors and if there is a difference of opinion among them a vote is taken. One of the justices is thereupon instructed by the Chief Justice to prepare the decision of the Court in written form. This is sometimes a long document, covering many printed pages. The minority justices, if they so desire, may ask one of their number to prepare a *dissenting opinion* which is also published but which does not have any binding force. The majority decision rules.

Appeals. Most cases, arising in either the state or Federal courts, can be carried on appeal to a higher tribunal. In the state courts, the laws of the states determine what cases may be appealed. In the Federal courts this is determined by the code of Federal procedure. In some instances an appeal may be taken from the supreme court of a state to the Supreme Court of the United States by means of a writ of error. When one of the parties to a suit desires to appeal the decision, his attorney gives notice of appeal in the proper form. A writ is then issued by the higher court calling the case before it. Most appeals are taken on points of law, not on questions of fact. It is rarely necessary, on an appeal, to hear the evidence all over again; hence the appellate courts do little more than examine the record of testimony given in the lower courts and decide whether these lower courts have made an error.

Should the power of the Supreme Court be curbed? From time to time it has been suggested that the authority of the Supreme Court is too vast and ought to be restricted. One proposal is that a two-thirds vote of the justices should be necessary to declare a national law unconstitutional. At present, it is argued, the court may make a decision by a vote of five justices against four. In other words, it is said that the decision on an important matter may be settled "by the opinion of one judge." But this contention is really unsound. No act of Congress is ever declared unconstitutional by a single judge. In the Supreme Court one judge must be joined by at least four others before he can make his opinion prevail. It is true, of course, that one judge sometimes holds the balance of power; but that would also be the case if a two-thirds vote were required.

The power to declare a law unconstitutional is a very important one, but the American system of government requires that it shall be lodged somewhere. With Congress and forty-eight state legislatures all engaged in the work of making laws and trying to extend their respective jurisdictions, there are bound to be conflict and disagreement. Some body must be vested with jurisdiction to resolve those differences of opinion. It is easy to pick flaws in any judicial system but it is much harder to devise a better one.

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QUESTIONS ON THE TEXT

1. Name the two systems of courts found in the United States. Explain the difference. How did we happen to have a dual system?
2. Over what cases have the Federal courts jurisdiction? What is meant by *original* jurisdiction? By *appellate* jurisdiction? In what cases has the Supreme Court original jurisdiction?
3. Name the regular courts in the Federal judiciary; the special courts.
4. Define (a) law, (b) common law, (c) equity, (d) civil case, (e) criminal case, (f) statutory law, (g) statutes-at-large, (h) writ of error.
5. Arrange the following in order of legal superiority:

(a) State laws	(e) Supreme Court decisions
(b) The national Constitution	(f) State constitutions
(c) State court decisions	(g) Municipal ordinances
(d) Federal laws	(h) Treaties
6. What is the difference between law and equity?
7. How are Federal judges chosen? What is their term? How may they be removed?
8. What is the procedure in cases before the Supreme Court? Where may one read its decisions? What is a dissenting opinion?
9. Can cases be appealed from state to Federal courts? When and how? May all cases be appealed from the district and circuit courts to the Supreme Court? Explain.
10. How many district courts are there in the Federal system? What is their jurisdiction? Where do they sit? What Federal district do you reside in?

11. How many circuit courts of appeal are there? In what circuit do you reside?

12. How many Federal laws has the Supreme Court declared unconstitutional in its whole history? In how many cases has the Supreme Court declared an act of Congress unconstitutional by a five-to-four decision? Is this power dangerous? Would it be better to require a two-thirds or unanimous vote of the judges before declaring a law unconstitutional? Should Federal judges be elected? Why?

13. How are the following chosen: (a) United States district attorneys, (b) United States marshals? What does each do?

14. Can Congress diminish the salary of a Federal judge during his term? Can Congress increase his salary?

15. Who was Blackstone?

EXERCISE IN DEFINITIONS

Look up, in the text or in any law dictionary, the following terms and make a definition of each: 1. Jurisdiction. 2. Original jurisdiction. 3. Appellate jurisdiction. 4. Equity. 5. Law. 6. Common law. 7. Statutory law. 8. Dissenting opinion. 9. Constitution. 10. Decision. 11. Criminal case. 12. Civil case. 13. Plaintiff. 14. Defendant. 15. Plaintiff-in-error. 16. Defendant-in-error. 17. Admiralty and maritime jurisdiction. 18. Judiciary. 19. Statutes-at-large. 20. Revised statutes. 21. Revised ordinances. 22. Lawyer's brief. 23. Docket. 24. Appeals. 25. Cross examination. 26. Rebuttal. 27. Injunction. 28. Contempt of court. 29. Court of claims. 30. *Habeas corpus*.

QUESTIONS FOR DISCUSSION

1. In 1916 Congress passed a law forbidding the shipping from state to state of any goods which had been produced by any factory, shop, or mine in which children under fourteen years old were employed. The Supreme Court declared this law unconstitutional on the ground that Congress was not given this power by the Constitution. In 1919 under the color of its taxing power Congress imposed a special 10% tax on the net profits of any establishment employing child labor. This also the Supreme Court declared unconstitutional in 1922. Was the court justified in doing this? Why?

2. "A single judge, appointed for life and not responsible to the people, can nullify the action of a great legislative body which is elected by the people." Discuss this statement.

3. Is it better to have judges appointed for life or elected by the people for definite terms?

4. The administration of justice is said to be faulty in the United States. Is this so, and if so, in what ways and for what reasons?

TOPICS FOR ESSAYS

1. John Marshall and His Work. 2. Chief Justice Taney. 3. The Supreme Court and the Unwritten Constitution. 4. The Work of the District Courts. 5. The Work of the Circuit Court of Appeals. 6. The Nine Five-to-Four Decisions of the Supreme Court. 7. The Court of Claims. 8. Explain the issue and summarize the decision in one of the following cases: (a) *McCulloch vs. Maryland*, (b) *Marbury vs. Madison*, (c) *The Dartmouth College Case*, (d) *Gibbons vs. Ogden*, (e) *Fletcher vs. Peck*, (f) *Munn vs. Illinois*, (g) *Dred Scott vs. Sandford*.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the power of the courts to issue injunctions in labor disputes should be curbed.

2. That judges should be allowed to give juries their opinions on matters of fact as well as on points of law.

CHAPTER XI

THE CABINET AND THE NATIONAL DEPARTMENTS

1. In 1918, when President Wilson went to Paris for the peace conference, he asked Vice President Marshall to preside at meetings of the cabinet during his absence. What constitutional right did President Wilson have to do this? Later, when President Wilson was ill in Washington, a call for a meeting of the cabinet was issued by Secretary Lansing, as the senior member, without the President's consent. The President subsequently pointed out to Secretary Lansing that he had no right to issue such a call, and added the admonition: "There is nothing that the cabinet can do without my concurrence." Is there anything inconsistent between these two actions of President Wilson?
2. In 1927 an International Economic Conference was held at Geneva to discuss various problems of interest to the nations of Europe and America. The United States agreed to send delegates to this conference. President Coolidge desired recommendations as to suitable persons for this mission. Should he have asked for such recommendations from the Department of State or from the Department of Commerce?
3. In France, a member of the cabinet is permitted to speak in either chamber of the French parliament. If a member of the cabinet so desires, he can send one of his assistants to speak for him. Would you favor the adoption of such a plan in the United States?

The cabinet is not mentioned in the Constitution. The Constitution of the United States makes no definite provision for a cabinet. Its framers expected that the President would have assistance in the performance of his numerous functions, for the Constitution contains a reference to "heads of departments" and provides that the

President should have power to require their advice in writing; but there is no provision that these heads of departments shall constitute an organized cabinet or have any special powers as such. Hence the cabinet of the United States (as a body which holds meetings) is based upon usage, not upon the Constitution or the laws. The same is true of the English cabinet. But by custom the prime minister in England must select for membership in his cabinet persons who have seats in Parliament. The President of the United States has a much wider range of choice in the selection of his cabinet. Far from being compelled to appoint members of Congress, he is not permitted to select as a member of his cabinet anyone who sits in either house. But he may choose from the entire range of American citizenship outside.

Composition of the cabinet. By usage, however, the President's cabinet consists of the heads of the national departments; these departments have been established at various times by law. In selecting these heads of departments, a new President takes various factors into account. For example, he keeps geography in mind and chooses them from all parts of the country. Likewise he tries to give some representation to different factions, such as high-tariff and low-tariff groups, within the ranks of his own party. To a certain extent he is also influenced by considerations of personal friendship. It would not do to have in the cabinet men whom the President could not take into his complete confidence. Some heed must also be paid to the personal abilities of the persons selected. For Secretary of the Treasury, the President naturally desires someone who has had experience in finance; for Attorney-General he always selects a lawyer; and for the Department

of Labor, someone who is familiar with labor problems. Making a cabinet is like solving a jig-saw puzzle by putting together into a satisfactory pattern a number of blocks which are of different shapes and sizes.

Functions of the cabinet. There are now ten members in the cabinet. In describing their functions, it is advisable to make a distinction between the duties which are performed by the cabinet as a whole and those which pertain to the members individually as heads of departments. The cabinet as a body has no authority to do anything. All its acts must be performed through the President. It is merely a group of high officials whom the President calls together once or twice a week to discuss such matters as he may lay before it, or such questions as he permits individual members to bring up. The President may follow the advice of his cabinet or he may not. If he does it is merely because he agrees with it. President Lincoln, for example, did not consult the cabinet in framing the Emancipation Proclamation; he merely read it to the cabinet after it was finished. The President must always take the whole responsibility. He cannot escape it by saying that he felt bound to follow the cabinet's advice.

An advisory council to the President. Nevertheless it has become the President's custom to consult the cabinet on practically all important questions and to give considerable weight to its advice. Whether he will in all cases be guided by it depends in large measure upon the personality of the President himself. General Grant, while President, treated his cabinet as though it were his general staff, with the function of carrying out orders rather than of giving advice. President Roosevelt usually had his own mind made up on matters of policy before he submitted them to

his advisers. President Wilson, differing from both the others, made it a point to get into his cabinet men whose minds ran along with his own. But most of the other Presidents during the past fifty years have consulted their cabinets freely and have been considerably guided thereby.

Cabinet meetings. Meetings of the cabinet are regularly held twice a week in the executive offices at the White House. The members sit around a large table with the President at the head and the Secretary of State at his right. Other heads of departments range themselves at the table in order of seniority—that is, the seniority of their respective departments. The Vice President, when he is asked to attend, sits at the foot of the table. First, the President lays before the cabinet for discussion any business that he thinks ought to be considered. Then he asks the members, one by one, to bring up any matters that they may wish to have discussed.

Their secrecy. Meetings of the cabinet are not public, and no minutes are ever kept or printed. No outsider is supposed to know what goes on at cabinet meetings. It is a point of honor among the members not to disclose what has been under discussion or what decisions have been reached. When newspaper reporters seek such information, they are always referred to the President for it. He can give it if he chooses, but usually he does not. Thus the cabinet always presents the appearance of being unanimous. In a general way it is unanimous, for if any member finds that he cannot work in harmony with the President, he is expected to resign. Members of the cabinet, like other civil officers of the United States, are subject to impeachment before the Senate.

Individual functions of cabinet members. Much more

Important than the functions which the cabinet performs collectively are the duties imposed upon its individual members as heads of their departments. Each member of the cabinet is the head of an important branch of the national administration. As such he is given charge of certain matters which are indicated, in a general way, by the title which he bears. The scope of each department's work is defined by law, but on matters of detail and routine the head of the department has the right to make regulations within his own field. The Secretary of the Treasury, for example, makes rules concerning the filing of income tax returns; the Secretary of Labor frames the rules concerning the permits which are given to immigrants before they sail for the United States. It would be impossible, in a few paragraphs, to set forth more than the barest outline of what the heads of departments in Washington are supposed to do. They make various minor appointments, for Congress has in some cases given them this power subject to civil service laws. They make recommendations to the President in the case of higher appointments which are vested in his hands; for example, the Attorney-General as respects judicial appointments and the Secretary of State in the case of appointments to the foreign service. They sign documents by the hundred and deal with all manner of complaints arising in connection with the work of their departments. Members of the cabinet must listen daily to senators and congressmen who come with suggestions, recommendations, and requests for favors. They go before committees of Congress whenever called upon, and supervise the preparation of all data that either Congress or the President may request.

The State Department. The Department of State was the first of the departments to be established, and the Secretary of State is, for that reason, the senior member of the cabinet. He and his assistants deal chiefly with foreign and diplomatic affairs. The State Department is the channel of intercourse between the government of the United States and all foreign governments. It performs the actual work of negotiating treaties, sending and receiving diplomatic correspondence, giving instructions to American diplomats abroad, issuing passports, and requesting the extradition of criminals who have fled from the United States to other countries. If there is an extradition treaty with the country to which the fugitive has gone he will be delivered up when the request is made in proper form. All this work, however, is usually performed under the President's supervision; but this watchfulness may be close, or only general, as circumstances dictate. President Roosevelt insisted on being consulted even with reference to details. So did President Wilson. The latter sometimes wrote diplomatic messages on his own typewriter and then sent them to the Secretary of State all ready to be signed. President Coolidge, on the other hand, kept in touch with the major problems only, leaving all details to the department.

The State Department also has some duties which are not connected with foreign affairs. It is the medium of communication between the government of the United States and the various state governments. It is duly notified when state legislatures ratify constitutional amendments. The Secretary of State has charge of the Great Seal, which is affixed to all national documents of impor-

tance, and he countersigns all proclamations issued by the President. In a way he is the general secretary of the United States.

The foreign service. Mention has been made of the foreign service. The United States, like all other independent countries, sends and receives certain diplomatic officials known as ambassadors and ministers, as well as commercial representatives known as consuls. These officers when sent abroad to represent the United States are appointed by the President with the consent of the Senate, and their business is to look after American interests in the countries to which they go. They report regularly to the Secretary of State or to the Secretary of Commerce as the case may be. At all the more important foreign capitals the American diplomatic representative has the rank of ambassador; at the less important capitals he has the rank of minister.¹ In duties and authority, however, there is no important difference between the two. The distinction is chiefly in salary and social precedence. Ambassadors and ministers are the channels through which the State Department or Ministry of Foreign Affairs communicate with another country when it has complaints to make or treaties to negotiate, or other official business to transact. These diplomatic officials have also the duty of protecting American citizens in the countries where they are stationed.

Consular officers. Consuls are not concerned with diplomatic questions but with matters of trade. Their chief function is to advance the commercial interests of the United States abroad. They are on the lookout for

¹For example, there are American ambassadors stationed in London, Paris, Berlin, Rome, Tokyo, Mexico City, Rio Janeiro, etc.; while ministers are placed in Athens, Lisbon, Copenhagen, The Hague, Bucharest, Bogotá, Montevideo, etc.

opportunities in the way of foreign trade, new markets for American goods, and new sources of raw material. They give information concerning all matters of business in the United States, assist Americans in legal transactions abroad, and have various functions connected with the immigration of foreigners to this country. All the lower ranks in the foreign service, both diplomatic and consular, are now filled by competitive examination. Most of the higher positions are filled by promotion. But the very highest positions, those carrying the rank of ambassador or minister, are occupied for the most part by men whom the President chooses directly from civil life.

The Treasury Department is next in order of seniority. Its work may be grouped into four divisions. First, there is the collection of revenue, more especially the supervision of customs officers and collectors of internal revenue. Until a few years ago it was particularly concerned with the enforcement of national prohibition, especially as regards the illicit importation of intoxicating liquor. The Treasury Department issues all regulations relating to the assessment of customs duties, excises, and Federal taxes, such as income taxes and the taxation of inheritances. Second, it has the custody of the public funds, and is responsible for the payment of all bills which have been properly incurred. Collection of the revenue and the payment of expenditures is now arranged through the various Federal reserve banks. Third comes the supervision of the currency, including the control of the mints which coin the money. These functions are more directly entrusted to the Comptroller of the Currency, the Director of the Mint, and the Director of the Bureau of Engraving and Printing, which prints the paper money. The Treasury Department like-

wise has supervision over the national banking system. When the government desires to borrow money, the bonds are issued by this department. It must also make proper provision for the payment of the bonds when they become due. All the accounts of every other executive department are audited under the supervision of the Secretary of the Treasury. Finally, there are some miscellaneous powers relating to the construction and maintenance of public buildings, the supervision of the coast-guard and life-saving service, the quarantine and public health services, and the government engraving and printing bureau which issues all the government reports. This enumeration of significant and varied functions will serve to show how much work the Treasury Department has to do.

The War Department. As its name implies, the War Department is chiefly concerned with the maintenance and administration of the army. It has to do with enlistment and equipment in all branches of the military service, including contracts for supplies, the upkeep of fortifications, and the transportation of troops. In addition to these purely military functions, the Secretary of War has two important fields of civil authority. One is the supervision of certain public works undertaken by the national government, such as the dredging of harbors and the improvement of waterways. All the navigable waters of the United States are under the final jurisdiction of the War Department. No obstruction to navigation in the way of bridges or piers may be erected anywhere without this department's consent. The other function is that of supervising the administration of the insular possessions. The Philippines, Porto Rico, and the Panama Canal Zone are under the general care of the War Department, subject to the pro-

visions of laws which have been made by Congress. Unlike most European countries, the United States has no department of colonial affairs. Hence our external possessions are divided among three departments: the War Department looks after the islands and the Canal Zone; the Department of the Interior has supervision over Alaska and Hawaii and the Virgin Islands; while the Navy Department has general charge of Guam.

The Department of the Navy. One can readily imagine what the functions of this department are. It is concerned with the construction and upkeep of the naval vessels, the establishment and maintenance of navy yards, the enlistment of men for the navy, the making of contracts for naval supplies, and the general control of the country's armed forces afloat. The marine corps comes within the jurisdiction of the Navy Department. The air forces are divided between the army and the navy; they do not form a separate department as in most other countries. It has frequently been urged that the air forces ought to be segregated into a department of their own, just as the army and the navy are; and that may be done when they grow to sufficient importance.

The Department of Justice. The head of the Department of Justice is the Attorney-General. He is the chief legal adviser of the national government. The President and the heads of departments call upon him from time to time for his opinions on points of law. Likewise he represents the nation in all legal proceedings. He is responsible for the prosecution of corporations and individuals who violate the Federal laws, but this work is performed through the medium of Federal district attorneys, commissioners, and the United States marshals throughout the country.

These subordinates are appointed by the President, but they are under the immediate supervision of the Attorney-General.

The Post Office Department. This department is headed by the Postmaster-General. He has nearly three hundred thousand employees of all ranks under him. The department has oversight of the entire postal business of the United States, which is the largest single business enterprise of any sort in the world. It includes not only the regular postal service, but rural mail delivery, the parcels post, the handling of money orders, and the postal savings banks. An important authority possessed by the Postmaster-General is that of denying the use of the mails to swindlers and to obnoxious publications.

The Department of the Interior. The title of this department gives no clue to its functions. Its functions are so varied and of such a miscellaneous nature that it has sometimes been called the *Department of Things in General*. Its work is made up of things which have been turned over to it from time to time because there was no other convenient place to put them. For example, the Interior Department has charge of national parks, Civil War pensions, Indian affairs, public lands, the geological survey, and, strange to say, the educational work of the national government; for the Office of Education is sheltered within its expansive jurisdiction. It has been suggested that the pension bureau ought to be turned over to the War Department, thus relieving the burden on the Department of the Interior, but this has not been done.

The Department of Agriculture. The Department of Agriculture has also a varied list of responsibilities, includ-

ing the maintenance of agricultural experiment stations and the inspection of meat and other food products. Much of its work is scientific investigation and research. It has added greatly to the production of farm lands by its discovery of improved methods in agriculture. The Bureau of Entomology, for example, has been active in combating insect pests. The control of the Weather Bureau and the forest service are vested in the Department of Agriculture. Its work is supplemented by that of the states, most of which maintain their own departments of agriculture.

The Department of Commerce. This branch of the executive department has to do with the development of foreign and domestic trade, the control of great corporations, the regulation of fisheries, the taking of the census, publication of commercial statistics, and the promotion of American trade both at home and abroad. In connection with this varied work, the department gathers statistics and other information concerning trade; it maintains lighthouses and other aids to navigation; controls the inspection of steamboats, and fixes the standards for weights and measures. The Census Bureau, which counts the population every ten years, is in this department. A census, however, is not merely a counting of persons. It also involves the collection of data relating to wealth, farm products, income, births, deaths, marriages, and a great many other matters. In 1925 the Bureau of Patents was transferred to the Department of Commerce.

The Department of Labor. Its functions are closely connected with the control of the immigration service, the administration of the naturalization laws, and the adjustment of relations between labor and capital. It includes a Children's Bureau to which is entrusted the execution of

the Federal laws relating to the employment of child labor in areas under Federal control. In a word, this department seems to do for the interests of labor what other departments are doing for agriculture and commerce.

Boards and commissions. The above are the ten regular departments, but not all the administrative work of the national government is handled by them. Several important branches of administration are not included within these departments but are controlled by boards, the members of which are directly appointed by the President. There are two reasons why boards rather than bureaus are used for some administrative work. One reason is that boards permit deliberation and decision by a group of men, and there are some administrative functions which are best handled in that way. The other reason is found in the fact that the board system can provide continuity. When the head of a department goes out and a new one comes in, there is often a change in policy; but the members of a board can be appointed for varying terms so that when one member retires, the others maintain the continuity. A board also can permit the representation of both political parties, which a department or bureau does not.

The Interstate Commerce Commission. The best known among these boards is the Interstate Commerce Commission, established about forty years ago to supervise the execution of the national laws relating to foreign and interstate trade, more particularly those relating to the railroads. The original powers of this commission have been greatly extended during the past twenty-five years. It is now composed of eleven members. In a general way it supervises all matters relating to rates and service on railroads which do business in more than a single state.

It likewise has jurisdiction over telegraph and telephone lines, wireless-telegraph companies, and pipe lines which carry oil, gas, or water. But it does not have control of radio broadcasting stations. That function is entrusted to a separate board, the Federal Radio Commission.

The Federal Trade Commission. Another body which exercises jurisdiction in the field of commerce and industry is the Federal Trade Commission, established in 1914. It is composed of five members appointed by the President. It has power to investigate and prevent all unfair competition in commerce and industry, except among transportation companies and banks, both of which are under the supervision of other Federal authorities. In connection with this work it has power to examine the books of business concerns. It also conducts special investigations when requested to do so by Congress or by the President.

Other federal boards. Several other boards have a part in the work of national administration. The Tariff Commission is made up of six members appointed by the President. They must be drawn equally from the two political parties. Its function is to investigate tariff problems and lay its findings before Congress. The Federal Reserve Board and the Federal Farm Loan Board have general supervision over the system of Federal reserve banks and farm loan banks. The Civil Service Commission prepares the eligible lists from which appointments that come under the civil service rules are made. It holds examinations at different points throughout the country. The United States Shipping Board controls, and to some extent operates, the merchant vessels which are owned by the United States.

Should the Cabinet be enlarged? Proposals are now

under consideration for enlarging the Cabinet by the creation of a Department of Education and a Department of Public Health. It is contended, and perhaps with reason, that the work of the national government in these two fields is sufficiently important to warrant their being placed upon the same footing as agriculture, commerce, and labor. It has been suggested that education and public health might well be combined into a single department of public welfare; but the objection to this is that the two things have no very close relation to each other. Doubtless some such new department would have been created were it not for the feeling that the cabinet is already as large as it ought to be. If every request for the creation of a new department were granted, it would soon become too cumbersome for the effective performance of its functions.

Should members of the cabinet sit in Congress? Some people regard it as a defect of the American cabinet system that members may not sit or speak in either house of Congress. It means, in a way, that the executive and legislative branches of the government are kept at arms length apart. Members of the cabinet have information of great value to Congress, and Congress is usually desirous of getting this information when questions are under debate. Why not bring the two bodies into closer contact by permitting members of the cabinet to sit and speak, but not to vote, in both houses? Some prominent American statesmen have argued in favor of this proposal and have pointed out that it is a feature of European governments. In the French Republic, for example, a member of the cabinet is entitled to the privileges of the floor in either chamber of parliament at any time.

Objections to the proposal. There are some practical

objections which should not be overlooked. This change would greatly increase the President's influence over the work of Congress by giving him ten agents in each chamber. Though they would have no votes, they would undoubtedly have much influence. The President would select members of his cabinet on that basis. He would be under temptation to select the members of his cabinet not for their administrative competence but for their debating ability. Would it be desirable to have members of the cabinet selected on that basis? It is also pointed out as an objection that members of the cabinet already have enough to do in attending to the affairs of their own departments. Were they to spend a large part of their time in attending sessions of the Senate and the House, they could hardly give proper supervision to their other work. Members of the cabinet now have the privilege of appearing before the committees of Congress at any time and can impart information in that way.

The English and American cabinets compared. The cabinet systems of the United States and Great Britain have often been set in contrast. There are three important differences. In the first place, members of the English cabinet must have seats in Parliament, while members of the President's cabinet must not be members of Congress. In England the cabinet initiates nearly all important projects of legislation. In the United States, the President's cabinet does not assume this responsibility. Finally, the English cabinet is by usage responsible to the House of Commons, while the cabinet of the United States is responsible to the President alone. While an adverse vote in the House of Commons is sufficient to overthrow the cabinet in England and cause all its members to resign,

a hundred adverse votes in the Senate or the House of Representatives at Washington would not necessarily cause any member of the American cabinet to resign so long as he possessed the confidence of the President.

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QUESTIONS ON THE TEXT

1. What is the cabinet? How many members has it? Who appoints them? For what term? Who are eligible for appointment?
2. What considerations does a President take into account in choosing members of his cabinet?
3. Describe a cabinet meeting. What business is discussed at such meetings?
4. What is the relation of the President to his cabinet? On what does this relation depend? Why are cabinet meetings secret?
5. What two classes of functions does the State Department exercise? Describe them.

6. What is the foreign service of the United States? Name its branches. Who compose each of them? Indicate their duties.

7. Name the four general divisions of the Treasury Department work.

8. Compare the War and Navy Departments as to their respective functions. Why is the Marine Corps under the Navy Department? Should there be a separate Department of Aviation?

9. Make a list of the Attorney-General's duties.

10. Does the Department of the Interior deserve its nickname? Why?

11. Is it a proper function of the government to encourage American trade abroad? How is this done?

12. Should there be a national Department of Education? Why?

QUESTIONS FOR DISCUSSION

1. In 1923 a Committee on the Reorganization of Government Departments reported various recommendations to President Harding, among which were the following:

- (a) That the War and Navy Departments be combined into a Department of National Defence under a single cabinet officer.
- (b) That the Bureau of Insular Affairs be transferred from the War Department to the State Department.
- (c) That a new Department of Education and Welfare be created, with four major divisions; namely, education, health, social service, and veterans' relief. The new department would include such activities as Indian schools, pensions, soldiers' homes, the administration of Federal prisons, etc.
- (d) That the Patent Office be transferred from the Interior Department to the Department of Commerce.

Give your opinion of these recommendations.

2. Should the Army and the Navy both have their own air forces or should there be a separate Department of Air Defence, as in England?

3. Should there be a United States Foreign Service Academy

similar to the Naval and Military Academies at Annapolis and West Point?

4. Place in three parallel columns the titles of cabinet officers in the United States, France, and Great Britain, indicating how far the distribution of functions is alike and how far it is unlike.

TOPICS FOR ESSAYS

1. The English System of Cabinet Responsibility. 2. The American Cabinet as an Advisory Body. 3. Washington's First Cabinet. 4. Lincoln's Cabinet. 5. The State Department. 6. The Treasury Department. 7. The Department of Justice. 8. The Department of the Interior. 9. The Department of Commerce. 10. The Department of Labor. 11. The Foreign Service. 12. The Bureau of the Budget. 13. The Office of Education. 14. The Interstate Commerce Commission. 15. The Federal Trade Commission. 16. The Patent Office. 17. The Bureau of Insular Affairs. 18. The Forest Service. 19. The Tariff Commission. 20. The Bureau of Indian Affairs.

(Material may be found in the numerous *Service Monographs* published by the Institute of Government Research.)

SUBJECTS FOR DEBATE

RESOLVED:

1. That a new Department of Education should be created.
2. That all appointments to positions in the foreign service, even the highest, should be made by competitive tests or by promotion.

CHAPTER XII

WHAT THE NATIONAL GOVERNMENT DOES FOR THE PEOPLE

1. Coal, oil, and timber are essential to the growth of industry. All three of them are limited. Some day, if we keep on using them at the present rate, they will give out. Should the national government (a) take over these natural resources in order to conserve them, or (b) regulate their use while leaving them in private hands, or (c) keep its hands off the problem entirely?
2. It is sometimes said that the Federal reserve banks can serve to discourage speculation in the stock market by "raising the rediscount rate," and that by the same action they can keep gold from flowing out of the country. People who are buying stocks on the stock market keep an eye on the rediscount rates in the belief that when these rates go up the prices of stocks are likely to fall. Why should they be likely to fall?
3. During the years 1914-1919 the general level of prices in the United States nearly doubled. This was said to be due to *inflation*. Then, in 1920, the general level of prices fell rapidly and this was attributed to *deflation*. Are these explanations correct? Suppose somebody were to discover a method of making gold out of lead at a cost of a few cents a pound. Would general prices go up or down? Who would lose and who would gain by that discovery?
4. "Labor is not a commodity, and hence the laws ought to afford it special protection." Why is labor not a commodity, to be bought and sold like any other? Should labor have special privileges? For example, should workers be allowed to combine in order to secure higher wages while manufacturers are not permitted to combine in order to obtain higher prices?

The positive functions of government. It is often assumed that the functions of government are for the most

part restrictive in nature; in other words, that government exists mainly to prevent people from doing things that they would like to do. We are inclined to think of government in terms of police and traffic officers, inspectors, district attorneys, and prohibition agents. We think of it as an agency which is always saying *don't*.

Restriction, of course, is an important function of government. Every man's freedom must necessarily be restrained in order to safeguard the rights of others. That is why we have laws and courts. But not all the work of government is of this restrictive character. The greater part of it is constructive. Government not only restrains and controls. It encourages and promotes. Its main purpose is to promote, not restrict, the welfare of all. It is one of the most active agents in advancing every branch of the national welfare—agriculture, industry, commerce, education, public health, safety, and convenience. Every year it finds new things of this sort to do. Among the whole body of American government employees to-day probably four fifths are directly helping something while only one fifth is restraining something else.

The true test of a government. We are sometimes told that the function of government is to govern, but few people stop to reflect upon the broad meaning which the verb *to govern* possesses in modern times. To govern is to help feed, clothe, shelter, protect, educate, and even amuse a people as well as to make laws for them. Thomas Jefferson once said that a government is best when it governs least; but that doctrine would serve as a very poor test of good government to-day. It would put Abyssinia highest in the scale and America lowest. Not how much or how little a government does, but how well it does the work which it

sets out to do—that is the real test. There is nothing that a government ought to refrain from doing if the thing can be done better by the government than by anyone else. On the other hand, it is unwise to have the government undertake anything that can be done better by private enterprise. The national government of the United States now has in its employ about six hundred thousand persons. It seems a large number; but do not make the mistake of thinking that they are not engaged in *productive* work. They are helping to make life easier for the rest of the population.

National legislation. How are the functions of government performed? In the first place, the national government is a maker of laws. Laws relating to many important matters are framed and enacted at Washington. Indeed there are many problems which cannot be dealt with otherwise than by national law; for example, the regulation of commerce with foreign countries, the organization of national defence, and matters affecting the currency. Many things would be reduced to chaos if each of the forty-eight states attempted to regulate them by its own lawmaking authority—for example, if each state had its own kind of money, or its own system of weights and measures, different from all the rest. In every great nation there must be some central power endowed with authority to legislate on problems of importance to the people as a whole. In the United States the national government not only makes such laws but is responsible for enforcing them. To that end it maintains its own executive officers and its own system of courts. The national government also has its own prisons and places of detention. In a word, it has the complete machinery of a government and is not dependent

upon the coöperation of the states for the exercise of its authority.

National public works. The Federal government is a large owner of public property. Not only does it possess a vast amount of government land which is gradually being turned over to homesteaders, but it has reserved for the public benefit large tracts of national park and forest land. These areas are maintained out of national taxes. Likewise the Federal government, through its Bureau of Public Works, has erected and it maintains a great number of public buildings including post offices, custom houses, and courthouses. Together these are commonly known as Federal buildings. In addition, the nation owns buildings in various foreign countries for use as embassies and legations. Large amounts of national taxes, moreover, have been spent during the past century on the improvement of rivers and harbors throughout the United States. The national government is still engaged in this work on an extensive scale. In addition, it has embarked on a great program of highway construction. This work is not directly performed by the national government but is undertaken by the various states, the national government paying part of the cost.¹

Conservation of natural resources. So long as good land remained plentiful in the United States and natural resources seemed to be inexhaustible, very little thought was given to the possibility that some day both would become scarce. Much land in different parts of the country was exhausted by wasteful methods of cultivation and then abandoned. Coal, iron, copper, and oil were taken

¹The states designate the roads that are to be built or improved, and must also maintain them after they have been constructed. The contribution of the national government is 50% of the cost, not exceeding \$15,000 per mile.

out of the earth in ways that permitted enormous wastage. By negligence much forest wealth was permitted to be destroyed by fire. Not until the close of the nineteenth century did it begin to dawn upon the people that their natural resources were rapidly melting away. By that time nearly all the good land had been taken into private ownership and the day seemed close at hand when timber would have to be imported in large quantities. Accordingly a movement for the conservation of these natural resources was begun and was given great momentum by the personal interest of President Roosevelt. During the last quarter of the century this movement has made much progress both in securing the enactment of conservation laws and in the awakening of the people to the need for economy in the use of natural resources.

What conservation includes. Conservation of natural resources includes two things: first, the avoidance of waste. Natural resources are wasted whenever their use does not yield the highest practicable service. To let coal lie in the ground is not necessarily waste, but to take it out and then fail to use all the potential energy in it is clearly wasteful. Second, conservation means the replacement of natural resources so far as such replacement is practicable. In this connection it should be pointed out that natural resources fall into two general classes: first, those which cannot be replaced, such as coal, iron, copper, and oil. When they are used up there will be no more. Second, there are resources which can be replenished—for example, the fertility of the land, timber, and the fisheries. By the efforts of man in refertilizing, in reforestation, and in restocking the waterways these natural resources can be preserved indefinitely. Conservation, therefore, is not

merely a negative policy. It is constructive in that it urges not only the more careful use of exhaustible resources, but the replacement of those which can be replaced. In a word it seeks to secure the greatest good over the longest period of time.

Foreign relations. The national government has entire charge of American foreign relations. All nations are subject to the rules of international law, which may be defined as that body of usages and rules which the civilized countries of the world are accustomed to observe in their dealings with one another. In a strict sense international law is not law at all. Its rules have not been framed by parliaments or legislatures. There are no courts with power to enforce these rules. Nevertheless the rules of international law are generally respected and observed by all countries, particularly in time of peace. International law deals with sovereign nations and has no direct relation to the individual states within a nation. Virtually all the functions which bring the United States into contact with the rules of international law have been committed by the Constitution to the Federal government—for example, the making of treaties, the sending out of ambassadors, and the naturalization of aliens. No state of the Union may make any treaty, or declare war, or enter into an alliance, or send diplomatic representatives abroad. . No state, moreover, may maintain ships of war in time of peace, or armed forces except as provided by the Constitution. War can be declared by Congress alone, and the national authorities alone have the right to conclude peace at the close of a war.

How foreign relations are conducted. Relations with foreign countries have become more important and more



From Ewing Galloway, N. Y.

MCCLLOUD, CALIFORNIA, NURSERY OF SEEDLING TREES FOR REFORESTATION

Mount Shasta in the background.

complicated during the last half century because of the great development in means of transportation. American citizens go abroad in large numbers and many of them acquire property interests in foreign countries. To assure the proper protection of American citizens traveling abroad, the national government issues passports. A passport is a document by the Secretary of State, requesting that the holder be given all proper courtesy and protection. To insure the protection of property acquired by American citizens in foreign countries, the national government concludes treaties which promise this protection and guarantee foreign citizens similar treatment in the United States. Ambassadors and ministers are appointed by the President and sent to foreign capitals to serve as the medium through which international relations may be carried on. They make protests to foreign governments, whenever protests are in order. In matters of serious importance, when the protest of an ambassador is not heeded, he may be withdrawn as a mark of resentment on the part of his own country. In extreme cases, the armed forces of the United States may be landed at a foreign port to enforce the ambassador's demands. In this connection it ought to be explained that the relations of the United States with the various countries of Central America are of a somewhat special character. The national government has made treaties with Nicaragua, Honduras, Haiti, Santo Domingo, and other republics of Latin America, and these treaties provide for American intervention under certain circumstances. It is in compliance with the provisions of such treaties that detachments from the marine corps have been landed from time to time in these various countries and islands.

National defence. In spite of arbitration treaties and world courts and agreements for outlawry of war, it is questionable whether the world has yet succeeded in eliminating the possibility of international conflicts. Hence it is necessary that self-respecting nations make some provision for their own defence in case of attack or invasion. A country that is not able to protect its own citizens can scarcely be said to deserve their allegiance. A country that cannot defend itself against attack offers an invitation to the aggressiveness of its neighbors. Up to a certain point rivalry between different countries makes for progress, but when it develops into bitterness it becomes a menace to peace. Some day, let us hope, nations will learn to live together in amity like individuals, but until that fortunate time arrives it will be necessary for governments to insure their own safety in event of attack.

The armed forces of the United States. The national government, therefore, maintains a regular army, a navy (including a marine corps), and various air forces. Compared with that of other countries, the regular army of the United States has always been a small body. To-day it numbers a little over one hundred thousand men of all ranks. Relatively speaking, the navy is much larger, although its expansion was halted some years ago by the agreement made at the Washington conference on naval disarmament. In all countries a great development has been taking place during the last few years in the creation of air forces. Wars of the future, if they come, are likely to be largely concerned with fighting in the air. The policy of the United States has been to maintain a small standing army, with the idea that in the event of war this body can be greatly expanded by calling the National Guard into

the Federal service and by raising a large additional force of citizen soldiers, as was done during the World War. To enable this expansion to take place quickly and on a large scale, it is necessary that the country shall have a considerable group of reserve officers. Hence the policy of maintaining reserve officers' training corps in the colleges and schools.

Internal peace and order. National defence concerns itself not only with the protection of the country against foreign danger, but with the maintenance of peace and the prevention of civil disorder at home. The Constitution provides that Congress shall guarantee to every state a republican form of government. It also imposes upon the national government the responsibility for rendering assistance to any state which is threatened with invasion, or when civil disorder gets beyond the state's control—provided that it is asked to do so by the proper state authorities. The army and navy of the United States can be used for this purpose when needed. They can also be utilized to secure the enforcement of the national laws, or to uphold the authority of the national government in case this should be defied by any state or by any element within a state. The state militia, moreover, can be used when needed to secure the observance of the state laws.

The monetary system. The national government controls the currency system of the country. In the United States gold is the standard of value, having been so established by national law. This does not mean, however, that gold is circulated from hand to hand in commercial transactions. As a matter of fact, gold coins are rarely encountered in the ordinary operations of business. When we say that gold is the standard of values, we merely mean

that all prices are expressed in terms of gold. The actual payments are made in paper money, or in silver, or in the smaller coins of nickel or copper. The whole monetary system of the United States has been created by the national government and is based on the decimal system, which was adopted in 1784. No state is allowed to make or issue coin. The coinage is made at the mints, which are located at Philadelphia, Denver, and San Francisco. The silver is put into circulation, but the gold coin is mostly held in the treasury or in the Federal reserve banks as a reserve against the issue of paper money.

The controversy over the free coinage of silver. Gold was not always the sole standard of values in the United States. Originally, in 1792, the laws provided that there should be two monetary units, the gold dollar and the silver dollar, but in the course of time silver was demonetized; that is, it ceased to be recognized by law as a standard of values. This gave great offence to certain sections of the country, especially in the South and the West where it was felt that the lack of gold made money scarce and that this scarcity of money resulted in low prices for farm products. Many people believed that if silver were made a standard of values, on a parity with gold, money would be more plentiful and prices would go up. Hence their remedy for agricultural depression was to coin into dollars all the silver that would come to the mint. This movement for free coinage of silver at the ratio of sixteen silver dollars to one gold dollar was known as *bimetallism*. The issue was fought out in the presidential election of 1896, when William Jennings Bryan became the Democratic candidate for the presidency on the issue of free silver. After his defeat in that campaign the clamor for free coinage sub-

sided and during the last thirty years the supremacy of gold as the sole standard of values has not been seriously questioned. Silver continues to be coined, but only in such amounts as the government deems advisable.

Paper money. The national government, similarly, has the exclusive right to issue *bills of credit*, or paper money. All the paper money now in circulation throughout the United States is issued by the national government or by banks under its supervision. There are several kinds of paper notes in circulation, including silver certificates, gold certificates, treasury notes, greenbacks, national bank notes, Federal reserve notes, and Federal reserve bank notes. Each variety has been authorized at different times and under different conditions. A different reserve is held for each kind of paper. To explain all these differences would require a whole chapter, and they are really of no importance to the ordinary citizen, because all varieties of American paper money are as good as gold, no matter what kind of reserve is provided in each case. It seems an absurdity to have so many kinds of paper money in circulation, but the reasons are purely historical. From time to time the national government has decided to issue a certain type of paper money, sometimes to meet an immediate emergency; and after the emergency has passed the notes have been left in circulation. The situation would result in confusion if the notes circulated at different values, but they do not. They are all accepted at their face value everywhere. Nobody looks to see whether he is being paid in silver certificates, greenbacks, or national bank notes. He only knows that a paper dollar is worth a hundred cents, no matter when or how it was issued.

The American banking system. There are three out-

standing types of regular banking institutions in the United States; namely, state banks (often known as trust companies), the national banks, and the Federal reserve banks. In addition there are certain special banks, more particularly the agricultural credit banks, the intermediate credit banks, and the joint-stock land banks. Likewise, in most of the states, there are savings banks (which do not carry on a regular commercial business), coöperative banks, and banking institutions of several other types. Hence we have as many varieties of banks as of currency, and for the same reason. State banks are chartered by the states and are under state supervision. National banks are chartered by the national government and are supervised by it. Whenever the word *national* appears in the bank's title it is under Federal control. This supervision is exercised by the Comptroller of the Currency.

The national banks. The national banking system was established in 1863, during the Civil War, and had for its chief purpose the financing of the government at a time of great emergency. The national government in 1863 found great difficulty in selling its bonds. It had no nation-wide agencies for selling government bonds to the people. All the banks in the country were state banks and they showed very little interest in the national government's financial difficulties. Congress therefore decided to establish its own system of banks in order to facilitate the sale of the Civil War bonds. Hence the National Banking Act of 1863 provided that any state bank which would accept a charter from the Federal government might issue untaxed paper notes, provided it bought United States bonds to a designated amount and de-

posited these bonds in Washington as security. On the other hand, any state bank not accepting a national charter and continuing to issue paper notes would be obliged to pay a tax of 10 per cent a year on the money issued. At once there was a general transforming of state banks into national banks. New national banks were also organized under the provisions of the act. The plan worked so well that although it was devised to meet an emergency, it has been retained with some alterations down to the present day. National banks are owned by private individuals and their profits go to these shareholders. But they are regulated by national law and are inspected from time to time by officials who are sent out from Washington for this purpose.

The Federal reserve banking system. This is the product of more recent years. The Federal reserve banks are intended to supplement the work of the national banks. There are twelve Federal reserve districts with a Federal reserve bank in each. These institutions are *bankers' banks*; they do business with banks, not with individuals. The capital stock of each Federal reserve bank is subscribed by the national or state banks within the district, these subscribers being known as member banks. Each Federal reserve bank, therefore, is managed by officials who are elected by the member banks, but the whole system is under the general supervision of a Federal reserve board at Washington. This board is made up of the Secretary of the Treasury, the Comptroller of the Currency and five other members appointed by the President. These Federal reserve institutions receive deposits from member banks and lend money to them. When a member bank has too much money on hand, it

deposits the surplus in a Federal reserve bank. When it needs money to lend its customers it can obtain funds as explained in the next paragraph.

How the Federal reserve system works. The whole purpose of the Federal reserve banks is to give greater flexibility to the banking system of the country and to prevent a recurrence of such commercial crises as occurred in 1873 and 1893 through a scarcity of money. The business of the country needs more money at some times than at others. A good banking system should be able to meet this need, for if money cannot be had when it is required, there is then a likelihood that business will be curtailed and large numbers of people thrown out of employment. The Federal reserve system has apparently solved this problem. Whenever a member bank needs additional money for its customers, it goes to the Federal reserve bank of its own district and borrows the money upon acceptable security. Such acceptable security is usually in the form of government bonds or commercial paper. By *commercial paper* is meant the promissory notes or other obligations of corporations and individuals which have been given to the member banks in return for loans made to them.

Take an illustration. A merchant in a small city wants to borrow money for use in his business. He goes to his own local bank and asks to borrow it, giving his note for repayment in six months. But suppose this local bank has already loaned all the money that it has to lend. In the old days it would merely tell the merchant so and express its regrets, leaving him to solve the problem as best he could. To-day the local bank would take his note, go to the nearest Federal reserve bank, and get the

money for him. To use bankers' language, it would discount his note and then rediscount it at the Federal reserve bank. But where does the latter get the money to lend the member banks? The Federal reserve banks, under the provisions of the law, can issue paper money (Federal reserve bank notes) as needed.

Since their establishment in 1913, the work of these Federal reserve banks has been most valuable. They have enabled the banking operations of the country to be expanded in accordance with industrial development. They form a good illustration of the constructive and promotional work which the national government has performed for the benefit of American business.

The Federal land banks. The same is true of the Federal farm loan system, which was established by Congress in 1916. There are twelve district land banks, all of which are under the general supervision of a Federal board at Washington. These banks lend money to the farmers through agricultural loan associations. To provide money for such loans the banks are authorized to sell bonds to private investors. In other words the banks borrow money from private investors and then lend it to the farmers through loan associations at a slight advance in the rate of interest. Thus they protect the farmer from having to pay exorbitant rates on mortgages.

The Post Office. The postal service represents the largest business enterprise in which the national government is engaged. It is one of the few public services which makes a show of paying its way. As everyone knows, it is under the headship of the Postmaster-General, who has charge of the collection, forwarding, and delivering of all mail matter, including letters, newspapers, maga-

zines, and parcels-post packages. The Postmaster-General awards all contracts for the transportation of the mails, appoints the numerous employees of the department, and makes the general regulations under which post offices do their work. He is assisted by four assistant postmaster-generals. The postal service would earn a profit if it had a fair chance; but Congress controls the rates of postage and the salaries of employees. In its decisions on such matters it is governed largely by political expediency rather than by what is in accordance with business principles. Hence, in some years the operations of the postal service are conducted at a net loss. The postal service also provides for the issue of postal orders by which funds may be transmitted to all parts of the country or to foreign countries. It conducts an elaborate system of postal savings banks. During the past few years it has provided for the transportation of mails by airplane, thus greatly reducing the time necessary for conveying mail to distant points. Certain articles are prohibited by law from being carried through the mails and certain communications may be excluded by the Postmaster-General if he believes that the mails are being used for fraudulent purposes. If he decides that any corporation or individual is endeavoring to use the mails for fraudulent purposes, he issues a fraud order to the local postmasters and the use of the mails is then denied to the concern in question.

The encouragement of agriculture. Agricultural activities afford another striking illustration of the way in which the national government performs work of a constructive character. These activities range from one end of the country to the other. The national government maintains

a chain of agricultural experiment stations; it appoints hundreds of county directors throughout the country, with the function of advising farmers; it issues every year a great many publications on agricultural topics, and carries on a nation-wide campaign for the use of improved methods in farming. It has provided for the distribution of improved seeds and plants, and has devised means of combatting all manner of noxious weeds, insect pests, and plant diseases. It has searched throughout the world for new crop plants which would seem to be suitable for American soil and climate. Since the beginning of the twentieth century, more than fifty thousand new varieties have been brought to the United States for trial and a great many of them have proved successful. The national government has also established and maintains a weather bureau which keeps the country informed as to weather probabilities.

The development of commerce. Although the Department of Commerce is one of the newer departments in the national government, its work has been expanded to great importance since its establishment. The government has become heavily interested in promoting the development of American commerce with foreign countries and among the various states of the Union. To this end there is a Bureau of Foreign and Domestic Commerce at Washington which provides business men with information concerning commercial possibilities and endeavors to bring them into touch with such opportunities. Commercial agents are kept in all important foreign countries, on the lookout for new markets.

In addition, the national government has endeavored to promote improved methods in industry at home so that goods can be produced more cheaply but of better quality.

Statistics of all kinds are gathered and every ten years there is a census or complete inventory on a nation-wide scale. Taking a census is not merely a matter of counting the people. Figures are gathered at the same time with reference to a vast number of important matters—the value of crops and of industrial products, of home ownership, individual wealth, income, education, and so forth. A decennial census is really a stock taking of what the country has. The national government, again, issues patents for new inventions. A patent is a license granted to an inventor by the Bureau of Patents entitling him to exercise the exclusive right of making, using, or selling some new article for a given period. This period is now seventeen years. Patents can be bought or sold. Provision is also made for copyrighting books, that is, granting exclusive right to print over a period of twenty-eight years (renewable for another twenty-eight years); and for the registration of trademarks, in other words, for the registration of some distinctive word, emblem, or device which a manufacturer desires to use exclusively on his own goods.

The protection of labor. Employers buy labor as they buy raw materials, and workers sell their labor at so much per day, or so much a week. Yet labor is not a commodity in the ordinary sense. The labor of to-day will not keep and sell to-morrow. The merchant can keep his goods until some one is willing to pay the right price; but labor cannot be kept and sold in that way. If it is not sold to-day, it is a dead loss. Hence labor is regarded as entitled to special protection from the laws, and the national government maintains a special department to promote the interests of labor. This Department of Labor seeks to improve the conditions under which the wage earner is employed, and

to prevent unemployment so far as practicable. To this end there is a Bureau of Labor Statistics charged with the function of gathering statistics concerning labor conditions in every part of the country, including the cost of living, rates of wages, the conditions of work, and similar matters. These data are gathered in order that the actual conditions may be accurately known and remedial measures based thereon. There is also a Children's Bureau, established to help deal with the problem of child labor.

The interests of labor are closely connected with immigration. A large influx of workers from foreign countries would promote competition for jobs and force the scale of wages down. So Congress has passed rigid immigration laws and the enforcement of these is entrusted to a Commissioner General of Immigration in the Department of Labor.¹

Other constructive functions of national government. Many other constructive functions have been undertaken by the national government in the United States. The list, if given in full, would cover many pages. The protection of the public health through the enforcement of quarantine regulations at ports of entry is a service of great importance. The maintenance of lighthouses and other aids to navigation, the weather bureau, the coast and geodetic survey, and the steamboat inspection service are all of obvious usefulness to commerce. The work of naturalizing aliens, giving advice and information to the school authorities in the states, protecting the farmers' crops against damage by pests of all sorts, assisting the states in the building of main highways, promoting vocational education, fixing standards of weights and measures, caring for

¹See pp. 269-270.

war veterans, collecting debts due from foreign countries, helping to market surplus agricultural products, developing rivers and harbors—these are only a few of the other functions which can be enumerated. The scope of these activities may be realized by taking a single one of the ten national departments and noticing the various bureaus, divisions, services, and boards among which its work is divided, namely the Department of Agriculture. Its functions are entrusted to the Weather Bureau, Bureau of Animal Industry, Bureau of Plant Industry, Forest Service, Bureau of Chemistry and Soils, Bureau of Entomology, Bureau of Biological Survey, Division of Publications, States Relations Service, Bureau of Public Roads, Bureau of Agricultural Economics, The Insecticide and Fungicide Board, and The Federal Horticultural Board.

Government and economics. We often think of government as a matter of politics; but the functions of government are closely related to the economic life of the country, that is, to agriculture, industry, commerce, banking, and communication. Its work is protective, regulative, and constructive. Every year this work keeps expanding. Ten years from now it is bound to be more varied and important than it is to-day, for the functions of American government have doubled with each succeeding generation. The larger a country grows and the more complex its civilization becomes, the more its government is called upon to perform additional functions in the interests of the people. There is really no limit to what the people expect their rulers to do for them. Yet notwithstanding the vast and varied amount of work which the national government of the United States now carries on, it constitutes only a small part of the sum total of American governmental func-

tions. By far the greater part is still carried on by the states, counties, cities, boroughs, towns, townships, and villages. This administrative work which is performed by the state and local governments is less picturesque and gets less attention in the newspapers; but its importance is none the less vital on that account. In matters of government the most important things are not always those that get most public attention.

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QUESTIONS ON THE TEXT

1. "Government not only restrains but promotes." Give some personal illustrations of the citizen's contact with government in both fields.
2. Is a government official engaged in *productive* labor? Give reasons for your answer.
3. What kinds of public property does the national government own and maintain?
4. What is meant by a *program of conservation*? Classify the different types of natural resources.
5. What is a passport? How is one obtained?

6. Name some of the duties performed by an American ambassador abroad.

7. What is the National Guard? Can it be used outside the United States?

8. "Gold is the standard of value." "Free coinage of silver." "Sixteen to one." Explain these expressions.

9. What varieties of paper money circulate in the United States?

10. Explain how the national banking system originated and how it operates.

11. How many Federal reserve banks are there? Where are they located? By whom are they owned and managed? How are they supervised? What banking services do they perform?

12. Make a list of the functions performed by the Department of Agriculture.

QUESTIONS FOR DISCUSSION

1. In some European federations (such as the German Republic) the national government passes laws, and the state governments enforce these laws. In the United States each government enforces its own laws in its own courts. What are the merits and defects of these two plans?

2. The national government is now assisting the states by grants of money for road building. The objection is raised that the thinly populated states in the West get most of the roads while the thickly populated states of the East furnish most of the national revenue, and that for this reason the system of Federal aid is unfair. Does it seem so to you?

3. Should there be a national Department of Conservation with the duty of protecting and replenishing the nation's natural resources?

4. Why not have one kind of paper money instead of the several kinds we now have?

5. Would it be better to have one great central reserve bank like the Bank of England and the Bank of France?

6. Are there any services now performed by the national government which could be handled better by the states? Any now per-

formed by the states which ought to be taken over by the national government? If so, what are they?

TOPICS FOR ESSAYS

1. *Laissez-faire* and Paternalism in Government.
2. Federal Aid to the States.
3. River and Harbor Bills in Congress.
4. The Reclamation of Waste Lands as a National Project.
5. Passports and Visés.
6. The National Guard and the National Defence.
7. The Gold and Silver Coinage.
8. The Free Silver Controversy in the United States.
9. Our Paper Money and What Is Behind It.
10. The National Banking System.
11. The Federal Reserve System.
12. Taking a Census.
13. The Work of the Children's Bureau.
14. The Bureau of Standards.
15. The Library of Congress.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the policy of training reserve officers in schools and colleges is a wise one.
2. That all postmasters should be selected by civil service competition.
3. That the function of promoting commerce should be left to private business organizations and not financed out of public taxes.

CHAPTER XIII

DOMESTIC PROBLEMS OF NATIONAL GOVERNMENT

1. The Eighteenth Amendment, which was ratified by forty-five states, provides that Congress and the states shall have *concurrent power* to enforce national prohibition. Are the states which ratified this amendment under obligation to do their best in helping to make prohibition effective?
2. The United States government built and operates the Panama Canal. By analogy it is argued that it ought to help build and jointly operate with Canada a St. Lawrence River Ship Canal. Are the two enterprises on the same plane? Does the same reasoning apply to the Boulder Dam project? To the Muscle Shoals plant? To the merchant marine?
3. Is speculation in the stock market an evil? How may it disadvantageously affect business? The Federal reserve system can be used to check such speculation, but most people do not understand how this can be done. Do you?
4. It has been suggested that the numerical quota for immigrants should be abolished and free admission accorded all aliens who can comply with proper standards. Set up a series of tests, physical, mental, and moral. Make these tests so difficult that none but persons of high grade, who would develop into excellent citizens, can pass them. Apply the tests at American consulates in foreign countries. Open the doors wide to the best in other countries, but admit no others from anywhere, no matter how many or how few of their compatriots are already here. What would you say to this proposal?
5. Some states have good schools because they can afford them. Other states have inadequate school systems because they can-

not afford anything better. It is proposed that the national government, through a Federal Department of Education, should give financial assistance to those states in which the facilities for education are poor, and thus raise their standards. Do you agree with this proposal?

What are national problems? Every nation has problems of two kinds, namely, domestic and foreign, or national and international. Every well-informed citizen, young or old, ought to know something about these problems, for the value of his government depends upon the way in which it handles them. Very few of these problems, however, are wholly new ones. The same problems keep coming up over and over again, in a somewhat different form each time. Traffic congestion in the city streets, for example, is said to be a twentieth-century problem due to the use of the automobile; but the streets of ancient Rome were so crowded with chariots, wagons, and pedestrians that there was need for stricter traffic rules than we have to-day. Farm relief was an urgent problem in England a hundred years ago; corruption in politics has been a problem ever since government was first established; protection against river floods was a serious problem in Egypt twenty centuries before America was discovered; and prohibition was tried throughout the Near East in the time of Mohammed. Yes, very few problems of government are new. They are old problems in new form. We study a problem, therefore, because even though it may be solved within a few years it is likely to come up again. The outward aspects may be different but the fundamentals of the problem remain the same.

The purpose of this chapter is to set forth and discuss a few of the domestic problems which have been confront-

ing the national government during recent years. They do not include all the problems that have arisen, or indeed all of the important ones, but merely a selection which will serve to show how varied and how difficult some of these national problems are.

A. PROBLEMS OF LAW ENFORCEMENT

The problem of national prohibition. The question of abolishing the traffic in intoxicating liquors was an issue in the United States during the second half of the nineteenth century. There were many temperance organizations and a Prohibition Party which tried to educate the people to a point where they would vote against the manufacture and sale of intoxicants. In some states this endeavor was successful and state prohibition laws were passed. But it was difficult to keep liquor out of any state when neighboring states permitted the traffic. So the movement took the form of a demand for national prohibition, and in 1920 the Eighteenth Amendment was added to the Constitution. It provided that the importation, sale, transportation, and manufacture of intoxicating liquors for beverage purposes should be forbidden throughout the United States. It gave to Congress and to the various states concurrent authority to enforce this provision. Shortly after the amendment was ratified by the states, Congress passed a statute, commonly known as the Volstead law, which provided the machinery for the enforcement of the Eighteenth Amendment. The Volstead law defined the term *intoxicating liquors*; it also made provision for the lawful manufacture and sale of alcohol to be used as medicine, and it established penalties to be imposed for violations of the law.

Should the states help? But the Eighteenth Amend-

ment, as has been said, gave the state legislatures concurrent powers, and some of them likewise proceeded to enact enforcement laws. These state laws are in some cases more drastic than the Volstead Act in that they prohibit not only the manufacture, sale, or transportation of intoxicants, but the mere possession of liquor as well. Other states, again, have not assumed their concurrent share in the enforcement of prohibition but have left the entire task to the Federal government. As a consequence, the enforcement of national prohibition has been attended with a varying degree of success and failure in different parts of the country. Where the national and state governments have coöperated harmoniously and have supplemented the efforts of one another, the enforcing of the law has been much more effective than in other regions where this coöperation has been lacking.

The present situation. One also finds great differences of opinion among the people on this matter. There are those who believe that the enforcement of prohibition, despite numerous violations, has been a great economic and moral gain for the country. It has contributed, they believe, to our unexampled prosperity during the past ten years. These friends of prohibition believe that the national authorities should redouble their efforts and should put every pressure upon the several states to secure even more rigid enforcement. They believe that with time and effort the experiment will succeed. On the other hand, the critics of prohibition point to the numerous and flagrant evasions of the law which are going on in certain sections of the country; they lay stress upon the large amount of bootlegging that is in vogue; and some of them assert that the attempt to enforce prohibition has been in part respon-

sible for the so-called "crime wave" and the growing disrespect for law on the part of people in the larger cities. They point out that the attempt to enforce prohibition is costing the nation an enormous sum of money each year and claim that the work of enforcement is being accompanied by a large amount of political corruption. It is as yet too early for anyone to predict how this problem will finally be solved.

The problem of enforcing law and administering justice. Many good citizens have been disturbed during the past few years over the apparently increasing number of crimes which go unpunished. The amount of serious criminality has been growing steadily. No matter what method of calculation we apply, we find that crimes involving violence (such as murder and robbery) are relatively more numerous in the United States than in any other civilized country. America, therefore, has the unenviable distinction of holding the world's record for lawlessness.

Why it is difficult. This situation is not due to any single cause. Many things help to account for it. The growth of large cities with their great opportunities for crime and still greater opportunities for escaping detection—that is one of them. The frequent corruption and inefficiency of the police is another. Criminality is also encouraged by the defects of the judicial system, by the habit of electing politicians to be judges and district attorneys, by the abuse of the jury system, by the leniency of the courts, and by the ease with which cases may be appealed to the higher tribunals.

The remedies. Since lawlessness has no single cause, there is no single remedy for it. Our whole system of dealing with the prevention of crime, the trial of criminals, and

the punishment of convicted persons will have to be modified and made more effective. More attention must be paid to preventive work, that is, to the removal of those fundamental causes which encourage violations of the laws; for example, poverty, unemployment, demoralizing amusements, and the illicit sale of intoxicants and narcotic drugs. Court procedure must be speeded up, the jury system improved, judicial delays and technicalities eliminated, and the office of prosecutor taken out of politics. After conviction, moreover, the offenders should be dealt with in such way as to secure reformation and not merely to inflict punishment. In 1929 President Hoover appointed a special commission of distinguished citizens to study this whole problem of lawlessness and better law enforcement. Its recommendations will doubtless be the basis for improved conditions.

B. NATIONAL PUBLIC WORKS

The problem of flood control. The great disaster in the Mississippi Valley a few years ago, due to the overflow of that river, brought home to the country a realization of the great public works which are necessary in order to prevent future catastrophes of this kind. The Mississippi passes through the mid-section of the continent, almost from the Canadian border to the Gulf of Mexico. Hence no single state can successfully deal with the problem of controlling its waters. In 1928, therefore, Congress made provision for the building of a series of great dykes and other means of controlling the waters of the Mississippi in time of freshet. The work will cover a long period of years and in the end will involve the spending of great sums of national money. This cost will be borne in part by the

Federal government and in part by the states which are benefited.

The proposed St. Lawrence ship canal. One of the great national handicaps with which the grain-producing states of the Union have to deal is the difficulty of getting grain to tidewater. The farmers of the Northwestern and Middle Western states have had two alternatives in the matter of grain export, both of them expensive. They have been able to ship their grain by rail to the Atlantic ports, or, as an alternative, they can use the great lakes for water transportation. There is a practicable route from the upper lakes to New York by way of the New York State Barge Canal. Or, if so desired, the grain can be loaded on steamers and sent out by way of the St. Lawrence River. Both these water routes, however, necessitate a transshipment to the ocean liners, and this is an expensive procedure. It increases the freight charges. What the farmers of the Northwest and Middle West desire, therefore, is an all-water route direct from the lake ports to Europe. Hence they have proposed that the St. Lawrence be deepened from Lake Ontario to Montreal so that the ocean-going vessels can come right up to Duluth or other lake cities. It is proposed that this project shall be financed jointly by Canada and the United States. An international agreement for its construction and maintenance would be necessary. Naturally, the people of the Atlantic seaboard are not enthusiastic over the idea of constructing this great enterprise even partly at the expense of the entire United States, inasmuch as the canal might be detrimental to the commerce of the Atlantic ports, particularly to that of New York. It would provide a cheaper route between Europe and Western America, but only for four or five

months of the year. The St. Lawrence route is not usable, as a rule, from November to May or June.

Boulder Dam. To the extent that the states of the Northwest and the Middle West are interested in cheaper transportation to Europe, so likewise the states of the Southwest and the South Pacific slope are interested in a cheaper or more plentiful supply of water for irrigation and for power purposes. The Colorado River is the great waterway of this region. It flows through, or alongside, six states of the Union and into Mexico before it enters the sea. At certain seasons of the year, great bodies of water come down this river, often flooding its banks over a wide region and causing large amounts of damage. Much water is wasted into the Pacific when it might well be used for irrigating vast areas of desert land. It is proposed, therefore, to build a huge dam at a place known as Boulder Canyon, thereby storing water for use during the dry months of the year, and also making it available for the generation of electric energy which could be supplied to the neighboring states. Attempts have been made by the six states to reach an agreement as to the proper apportionment of this water and of the power to be derived therefrom, but without much success. In 1929 a measure was passed by Congress for the construction of Boulder Dam as a national project, to be financed out of the national treasury with the understanding that the cost shall be repaid from the sale of water and power. The work of construction is so stupendous, however, that the project cannot be completed for several years.

Muscle Shoals. During the World War, as part of the military program, Congress authorized the creation of a great nitrate plant at a place called Muscle Shoals in



From Eving Galloway N. Y.
THE GREAT SPILLWAY OF THE WILSON DAM AT MUSCLE SHOALS, ALABAMA

~~Alabama.~~ Nitrates were needed in connection with the manufacture of munitions and are also of great importance in the manufacture of fertilizers for use on the land. After the close of the war Congress had to face the question of whether this plant should continue to be operated by the national government in time of peace, or whether it should be turned over to some private corporation to be used by it in the manufacture of fertilizers. Several offers to purchase the plant were received from private individuals and organizations, but none of these was accepted. It has been argued that the national government ought to operate this nitrate plant for the benefit of the farmer and as part of a scheme of farm relief; on the other hand it has been maintained by the opponents of public ownership that greater efficiency at lower cost could be obtained through the operation of the plant by private enterprise.

C. AGRICULTURE

The problem of the farmer. The American farmer has had a rather hard time of it since the close of the war. During the great emergency, food prices went to a high point; the farmer got two dollars per bushel for his wheat and sometimes even more; he sold his cattle at high prices and made good profits while the war continued. Then when the war was over, the prices of agricultural products dropped to a low level, while the cost of implements, labor, and the other things which the farmer had to buy kept up. The high profits of the war period, moreover, had encouraged agricultural overproduction. It was anticipated that on the conclusion of peace the various European countries would need the entire surplus of American foodstuffs, but this did not turn out to be the case. The disorganization

of finance in the various countries of Europe prevented it. European countries had neither the gold nor the credit with which to make large purchases in the United States. Consequently the supply of agricultural products in the United States exceeded the normal demand, and prices went down to a point where farming became unprofitable. Many farms which had been mortgaged were lost to their owners, and many rural banks had to close their doors; general discontent spread through the farming communities.

Farm relief. Accordingly, Congress was importuned to provide some measure of agricultural relief. It was argued that inasmuch as the tariff protected the manufacturer from low prices and depression, so the farmer ought to be assisted by government action. To this end a proposal known as the McNary-Haugen Bill was introduced in Congress and there on two occasions passed both houses, but was vetoed by President Coolidge and could not be passed over his veto by the necessary two-thirds vote. The McNary-Haugen Bill provided for a government board which would assist farm coöperative associations to acquire surplus food products at times when prices should be low and hold them for sale until prices should go up. Money would be provided from the national treasury to help finance these operations. Provision was also made for marketing surplus products in foreign countries and for the equalization of losses by an assessment on all concerned. This last-named feature of the measure encountered strong objection and was the principal cause of the President's veto.

During the election campaign of 1928 both political parties gave the farmer a promise that some form of relief would be afforded at the next session of Congress, and

President Hoover turned his attention to this problem immediately after his inauguration. Calling Congress in special session he urged the passage of a relief measure somewhat along the lines of the bill which President Coolidge had vetoed, but with the objectionable features left out. This measure was duly enacted into law. It provides a large fund for the purchase of agricultural products when there is a surplus. The products are to be held until they can be marketed to advantage and the proceeds of such sales will then go into the fund. A Federal Farm Board of eight members, appointed by the President, has immediate charge of the system.

D. COMMERCE AND TRANSPORTATION

The merchant marine. Many of our national problems during the last ten years have been the direct outcome of the European war. The problem of the merchant marine is one of them. When the United States entered this conflict in 1917, an Emergency Fleet Corporation was created to build a great flotilla of vessels at public cost, and a separate organization known as the United States Shipping Board was established to operate them. So rapidly did the shipyards produce results that at the close of the war several hundred vessels belonged to the United States and were available for use as ocean carriers. Unfortunately, however, there was not enough commerce to keep these vessels busy. Foreign trade fell off at the conclusion of the war and large numbers of new ships had to be tied up in American harbors. Many of them were sold to private companies; others were turned over to such companies to be operated under lease; and a few are still being operated by the Shipping Board. The opponents of government

ownership have been urging Congress to get rid of these vessels and go out of the shipping business altogether. On the other hand, it is contended that the national government ought to retain ownership and control of these vessels in order that they may be a competitive factor in freight and passenger rates. Or if the vessels are sold to private companies, it is argued that the sales should be accompanied by various guarantees to protect the public interest.

Consolidation of the railroads. It will be remembered that during the latter part of the war, the railroads of the United States were taken over and operated as a single unit by the national government. They were put under a Director of Railroads who managed the entire railroad system of the country as a single service. In 1920, when the army had been demobilized, the railroads were turned back to their private owners under the provision of a Federal statute known as the Transportation Act. This act provided, among other things, that the railroads of the country might be consolidated into a few great trunk systems by the combination of the smaller lines, but it stipulated that all such combinations must be approved in advance by the Interstate Commerce Commission. The Transportation Act also provided that the rates to be charged by railroads in each section of the country should be fixed by this Commission at a sufficiently high rate to enable the railroads in each section to earn a net income of five and one-half per cent on their valuation. Several plans for consolidation have been submitted to the Interstate Commerce Commission since the passage of the Transportation Act but none of them has as yet found approval. Railroad consolidation is permitted by the law, but it is not made compulsory; that is, the Interstate Commerce Commission

cannot order it. The initiative must come from the railroads themselves. For that reason, proposals have been made in Congress to give the Commission mandatory power by which it would be able to order consolidation on its own initiative. It is contended that such consolidation would enable great economies to be made in railroad operation.

Prevention of strikes. The Transportation Act of 1920 provided for the establishment of a Railway Labor Board to consist of nine members appointed by the President. Of these nine three were to be representatives of the railroad owners, three of the railroad employees, and three of the public. The board was to have its headquarters at Chicago. It was to hear both sides in any labor dispute affecting the railroads and to make its recommendations, but was given no power to enforce these decisions. This experiment was not very successful and in 1926 the Railway Labor Board was abolished. In its place Congress provided for a Board of Mediation to consist of five members appointed by the President, and without any provision that this board should be representative of the special interests involved. When disputes now arise between the interstate railroads and their employees, the first step is for both parties to create a board of adjustment. If this board fails to adjust the difficulty, the matter can be referred to a Board of Mediation. The latter, which is created for each dispute, has no final powers; it can only recommend an adjustment of the dispute and inform the President of its decision.

E. LABOR PROBLEMS

The use of injunctions in labor disputes. An injunction is an order issued by the courts commanding a person

or a corporation to do something or to refrain from doing something. A court, for example, may by the issue of an injunction order an employer to reinstate a workman who has been wrongfully discharged; or it may forbid the calling of a strike by the officers of a union if such action involves the breach of an agreement with the employer. The idea is to prevent injury from being done rather than to wait and assess damages after the harm has been accomplished. Injunctions have thus been issued to prevent picketing during a strike and to forbid parades of strikers, the holding of meetings, and even the payment of allowances from labor union funds. Disobedience of an injunction is punished as contempt of court. The American Federation of Labor has strongly opposed the use of injunctions in labor disputes on the ground that its members may be committed for contempt of court and lodged in jail without a jury trial on the facts. The judge alone decides whether an injunction has been violated. The Clayton Act of 1914 provided that alleged violations of an injunction issued by any Federal court in connection with labor troubles should be tried by a jury. But the right to issue injunctions in such cases as are indicated above has not yet been taken away, although measures to curtail the power of the Federal courts in this respect have been under consideration by Congress during the last few years.

The immigration quota. The restrictions now placed on immigration into the United States, including the setting of a maximum quota for the immigrants from each country, is designed in part to afford protection to American labor. The manufacturer gets protection by means of the tariff, but until recent years the laborer has had no protection against the influx of workers from other coun-

tries. Before the war, nearly a million immigrants came to the United States in some years. After the war it was feared that the inflow would assume tremendous proportions and hence Congress framed, in 1921, a new immigration law. This provided that the number of annual admissions should not exceed three per cent of the number of foreign-born persons of a given nationality who were in the country when the census of 1910 was taken. This act was amended in 1924 by lowering the quota to two per cent, and substituting the census of 1890. The purpose of changing the census basis was to give larger quotas to the north European countries.

The "national origins" principle. The amended immigration law also provided that, beginning in 1929, the quota should be based upon the principle of national origins. The provision on this point is as follows:

"The annual quota of any nationality . . . shall be a number which bears the same ratio to 150,000 as the number of inhabitants in Continental United States in 1920 having that national origin bears to the number of inhabitants in Continental United States in 1920, but the minimum quota of any nationality shall be one hundred."

In other words, 150,000 per annum is set as the total immigration and each nationality (as determined by origin, not by allegiance) is to have its proportion as determined by the number of the same nationality already here. This provision, after having been twice postponed by Congress, was put into effect by presidential proclamation. The quota does not apply to Canadians or Mexicans.

F. EDUCATION

A Federal Department of Education. In recent years pressure upon Congress has been increasing steadily for

the establishment of a Federal Department of Education. The proposal is sponsored by the National Education Association, the American Federation of Teachers, the National League of Women Voters, and many other organizations, as well as by individual educators of prominence from all parts of the United States. Opposition to the suggestion also comes from various educational organizations and from equally prominent individual educators.

It is maintained by the advocates of a Federal Department of Education that such an agency would increase educational efficiency through better coördination of existing educational work carried on by the Federal government. Through the consolidation in one department of work which is now scattered among a number of departments it would eliminate duplication and waste. They claim that only through the establishment of such a department can adequate provision for educational research and investigation be had, since local and state school systems lack resources to carry on the research necessary to create that body of exact knowledge which is so essential to the effective and intelligent education of the children of the country. They would have a centralized research and service agency with resources and prestige sufficient to command respect and do scientific work, the results of which would be available to state and local school systems and officers throughout the United States.

Those who oppose the establishment of a department of education fear that such a department would gradually assume control of education throughout the country. They refer to the proposal as the entering wedge for Federal control of education; and they see the states and local communities crowded out of the control of another of their

natural functions. They fear that increased Federal activity will tend to mechanize and standardize education and produce a dead level of uniformity. They anticipate that private and parochial schools will be interfered with to an increasing extent. It is also feared that the cost of education will be increased and that education will be dragged into politics.

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QUESTIONS ON THE TEXT

1. What does the Eighteenth Amendment prohibit?
2. What is the Volstead Act? Was it necessary for Congress to pass it? Why? Why does the Eighteenth Amendment give the states concurrent power of enforcement? Have they used this power? If so, to what extent?
3. Is national prohibition a success or a failure? If a failure, how can it be made a success?
4. What is the problem of flood control? Should the United States government bear half the expense of building dykes, levees, and dams for controlling great rivers such as the Mississippi and Colorado?
5. Since the building of the Panama Canal the amount of shipping from the Atlantic to the Pacific Coast has greatly increased. Should the canal be enlarged? Or should the United States construct another canal across Nicaragua? Should Congress authorize

the construction of the St. Lawrence Ship Canal with Federal aid?

6. Is the Boulder Dam project a Southwest problem alone, a national problem, or an international problem?

7. Where is Muscle Shoals? What problem has its location there? Should the plant be kept under government control? Is there danger of political mismanagement under government operation? Is the risk worth incurring in order to procure cheap fertilizers for the farmer?

8. What are the farmer's grievances? Has he greater burdens to bear than the laborer? The manufacturer? The merchant? The shipbuilder? Why, in each case?

9. Should the farmer be subsidized? If so, how? What did the McNary-Haugen Bill provide? Why did it not pass? What measure of relief was enacted in 1929?

10. What is the merchant marine? When was the period of its greatest prosperity? Why did it decline? What effect did the World War have on American shipping? What became of the ships which the government built during the war? What is the present attitude of Congress towards a merchant marine?

11. Give the chief provisions of the Transportation Act of 1920. Do you believe in railroad combinations and consolidation? Why or why not?

12. Did the Railroad Labor Board created in 1920 fulfill its functions? Do you believe in compulsory arbitration of labor disputes? Why? Do you believe that decisions of labor boards should be enforced by the courts? Why? What are the duties of a Railway Board of Mediation? Is the work of such boards effective?

13. What is an injunction? How is it obtained? Should injunctions be issued in labor disputes? What is the provision of the Clayton Anti-Trust Act, 1914, with respect to this matter?

14. Give the provisions of the National Origins Law with reference to immigration. Should Canada and Mexico be brought under the quota provision? Give your reasons.

15. Should we have a Secretary of Education? Of Public Health? Of Aviation? Why?

QUESTIONS FOR DISCUSSION

1. In 1929 the officials in charge of prohibition enforcement proposed that pamphlets urging strict observance of the Volstead Law and pointing out the benefits of prohibition be printed and distributed to pupils in all the public schools of the United States. The opponents of this proposal argued that if one side of the question were thus presented, the other side ought to be also. What is your opinion of it? Should the schools be used for propaganda under any circumstances?

2. Arrange in the order of importance the causes of *lawlessness* as you see them. Then suggest a way of eliminating each cause.

3. Should the national government undertake any great public works within a single state or only when such works affect more than one state?

4. Why should the farmer have government aid in marketing his crops when the manufacturer has no such aid in marketing his wares? Is it true that the manufacturer indirectly gets this aid through the tariff? Justify your opinion.

5. Could the railroads be more economically managed if they were all consolidated into a few great systems? State your reasons for your answer.

6. Is the "national origins" basis for immigration quotas a fair one? Why?

TOPICS FOR ESSAYS

1. The Volstead Law. 2. Systems of Regulating the Liquor Traffic in Other Countries. 3. State Prohibition Laws and Their Enforcement. 4. Are We a Lawless Nation? 5. Flood Control. 6. The Proposed St. Lawrence Ship Canal. 7. The Boulder Dam Project. 8. The Problem of Muscle Shoals. 9. The Federal Farm Board and Its Work. 10. How to Build Up a Merchant Marine. 11. Federal Encouragement of Aviation. 12. The Transportation Act. 13. The Prevention of Strikes on Railroads. 14. Labor Organizations and the Law.* 15. How Immigration Quotas are Fixed.

SUBJECTS FOR DEBATE*RESOLVED:*

1. That the Volstead Law should not be changed.
2. That the national government should arrange with Canada for the building of the St. Lawrence Ship Canal.
3. That when an injunction is issued in a labor dispute, the question whether there has been a violation of such injunction should be decided by a jury not by a judge.

CHAPTER XIV

FOREIGN PROBLEMS OF NATIONAL GOVERNMENT

1. The chief purpose in establishing the League of Nations was to prevent future wars. A large part of the covenant is devoted to provisions which have that end in view. But all the chief countries of the world have now signed an agreement known as the Kellogg Treaty, forever renouncing war as a means of settling international disputes. Does this action make the League of Nations unnecessary? Is it logical for nations to renounce war and still maintain armaments?
2. The following are said to be defects in the scheme of international government established by the League of Nations:
 - (a) no single executive,
 - (b) the requirement of unanimity for decisions by the League Council,
 - (c) the plan of equal representation in the Assembly,
 - (d) the giving of representation to dominions or colonies,
 - (e) the use of the boycott to compel obedience.Can you suggest better alternatives in each case?

3. It is said that "every right involves a responsibility." If the United States claims the right to prevent interference by non-American countries in the affairs of Central and South America, does this carry with it the duty of protecting their interests in this hemisphere on the same basis as our own?
4. During the World War those who were drafted for service in the army of the United States got \$30 per month along with their food, uniforms, and housing. Those who were not drafted stayed at home and sometimes earned as much as \$10 per day. The drafted men felt this to be unfair. If we have another war, is there any way of remedying this situation? Do you believe in raising an army by volunteer enlistment rather than by drafting men?

America and the League of Nations. When the United States decided to enter the World War, after long hesitation, it was with the desire to see the conflict ended in such a way that there would never be another great war. President Wilson, as spokesman for the American people, repeatedly declared that the treaty of peace must contain provisions for the future prevention of war. In this he reflected the sentiment of great masses of people throughout the world. There was no difference of opinion as to this ideal, but the problem was to translate the ideal into a reality. President Wilson believed the task to be of such importance that he took the unusual course of personally attending the peace conference which was held at Paris after the close of the war.

American objections to entering the League of Nations. When the delegates to the peace conference came together, it was agreed that a special commission should be appointed to prepare a plan for a League of Nations. This was done, and after long study and deliberation the commission worked out a plan which was adopted by the conference as a whole and incorporated into the Treaty of Versailles. Then the various nations were asked to ratify the whole document, that is, the Treaty and the Covenant of the League of Nations together. But in the United States both the Treaty and the Covenant met with opposition. Objection was particularly directed against Article X of the Covenant, by which the nations entering the League were obligated to guarantee one another's territory and independence against outside aggression. There was a fear that this provision might require the sending of American soldiers to participate in foreign wars. Objection was also raised to the provision which gave each of the British self-

governing colonies representation in the League Assembly, thus providing the British Empire with six votes while the United States had only one. Some fear was also expressed that the entrance of the United States into the League of Nations would make the maintenance of the Monroe Doctrine more difficult. At any rate, the Senate declined its ratification and the United States has remained outside the League.

The motive behind the League of Nations. The primary motive of those who urged the formation of a League of Nations was a desire to avoid future conflicts by providing an international government and a world court. It was hoped that an international organization with legislative, executive, and judicial organs would gradually win the confidence and obedience of all nations. This would not only remove the most common causes of war, but would enable the world to save the vast sums hitherto spent on warlike preparations. It would permit disarmament. Money hitherto spent on armies and navies could then be devoted to the development of industry and commerce, to education, to the protection of the public health, to the betterment of labor conditions, and to promoting all the arts of peace. Of course the idea of a League of Nations was not a new one in 1918-1919. It goes back to the days of the Italian poet, Dante, who dreamed of it six centuries ago. From time to time the general proposal was again brought forward, and at the two Hague Conferences (1899 and 1907) the possibility of avoiding future wars by international agreement was discussed; but not until the close of the World War did representatives of various nations set themselves to work out a detailed scheme.

Membership in the League. The Covenant provided

for the immediate admission of about fifty countries by their simple acceptance of it, but it made further provision that other countries could be admitted to membership by a two-thirds vote of the League Assembly. Under this latter provision, Germany, Austria, and Hungary have been admitted as members. The chief nonmember countries to-day are the United States, Mexico, Russia, Turkey, and Bulgaria. The covenant provides that any country, after having been admitted as a member, may withdraw on giving two years' notice. The right of membership is not restricted to sovereign nations alone but extends to self-governing dominions such as the Irish Free State, Canada, and Australia.

General organization of the League. What are the important features in the plan of government which the League sets up? This plan is sometimes referred to as a supergovernment, but it is more properly to be called an international federalism. In a way it extends to the nations of the world the general plan of federal organization which was adopted for the thirteen states of the American Union in 1787 and which has subsequently been extended to include not only the forty-eight states but territories and insular possessions situated in different quarters of the globe. The government of the United States has certain powers delegated to it by members of the federation; so has the League of Nations. The government of the United States has its legislative, executive, and judicial departments; so has the League of Nations. In a word, the League embodies a scheme of federal government writ large.

The League Assembly. The primary legislative organ of the League of Nations is known as the Assembly. Each

member nation is entitled to be represented in this Assembly by not more than three delegates. The Assembly meets once a year at Geneva on the first Monday in September and continues in session for several weeks. It elects its own presiding officer, appoints its own committees, and determines its own rules of procedure. Every member nation has one vote in the Assembly irrespective of whether it sends one, two, or three representatives. On some matters the Assembly can act by majority vote, but on others it requires unanimity.

The Council of the League. The Council of the League consists now of fourteen members, one from each of the five great powers (Great Britain, France, Italy, Germany, and Japan) which have permanent representation, and one from each of nine smaller countries. The latter are said to be nonpermanent members; that is to say, the Assembly decides from time to time what nations shall have a place among the nine. This it does by a two-thirds vote. The League Council also meets at Geneva and is now holding more than one session per year. In order to act on any matter, the Council must be unanimous. Any member of the League not represented on the Council is entitled to send a representative to sit as a member at any meeting of the Council during the consideration of matters affecting the interests of such member.

The Secretariat. By the terms of the covenant, certain functions of an executive nature are given to the Council, but the administrative work is devolved upon a headquarters known as the Secretariat. The Secretariat includes a permanent secretary and numerous officials who are appointed by him. This staff performs the clerical work, registers all treaties, carries on correspondence with

the member nations, and prepares business to be laid before the Council and the Assembly. The expenses of maintaining this Secretariat are borne by the members of the League in such proportion as is decided by the Assembly. Positions in the Secretariat are open equally to men and women.

The Permanent Court of International Justice. The Covenant of the League of Nations also makes provision for a permanent World Court composed of judges selected by the Assembly from among eminent jurists nominated by the different member countries. The United States, prior to the World War, was one of the leaders in urging the establishment of such a court. The American delegates at the first Hague Conference in 1899 brought forward such a proposal, which was not adopted at the time. Instead of a permanent World Court such as the United States suggested, the Hague Conference decided to set up a court of arbitration, which was really nothing more than a list of arbitrators from whom countries might choose persons to decide an international dispute in case they desired to do so. Again, at the second Hague Conference in 1907, a suggestion was made that this court of arbitration be transformed into a regular world court with regular sessions and permanent judges. But again the attempt was not successful because the delegates at the Hague Conference could not agree upon the best method of electing the judges. So the matter went over until after the League of Nations had been established.

How it is organized. The covenant provided that the League of Nations, as soon as it could do so, should enact a statute providing for the organization of a World Court, and in 1920 this was done. The statute provided for the

election of eleven judges by vote of the Assembly from among the leading jurists of the world. Four alternates or deputy judges were to be chosen in the same way. These alternates serve in case any of the regular judges are absent or disqualified. This "Permanent Court of International Justice" was given jurisdiction over certain matters provided for by the treaty of peace and over all other controversies which nations might voluntarily submit to it. Emphasis should be laid upon the point that so far as most disputes are concerned, the bringing of cases before the World Court is altogether voluntary on the part of the countries concerned. Provision is made, however, that any country may accept the jurisdiction of the World Court as compulsory—in other words, that it may agree to submit *all* disputes to the court, and a number of countries have done this. Provision is also made that either the Council or the Assembly of the League may call upon the World Court for advisory opinions with respect to any controversies which come up. These advisory opinions are not final judgments, but are for the guidance of the parties concerned.

The United States and the World Court. Some years ago the President of the United States recommended to the Senate that the United States accept the invitation to join the World Court with suitable reservations designed to protect American interests. The Senate discussed this question at great length and in 1926 finally gave its approval, but with several drastic reservations which virtually made adherence impracticable. Opposition to joining the World Court came largely from those who felt that it would bring the United States into too close relation with the League itself.

The American reservations. One of the reservations provided that the United States, by adhering to the statutes of the World Court, should not thereby assume any relations to the League of Nations or any obligations under the various peace treaties. Another stipulated that the United States should have an equal voice with other countries in the election of the judges. In other words, that the United States should be represented in the League Assembly when judges were being chosen, even though not a regular member of the League. Other reservations provided that the United States should not be held to pay any share of the Court's expenses except as determined by Congress; that the United States might withdraw its adhesion to the Court at any time; that the statute of the Court should not be amended without the consent of the United States; and that the Court should not give advisory opinions affecting the United States without American consent. The final stipulation was that the United States should not be held to have adhered to the statute of the Court until all the League members should have agreed to the foregoing reservations. There the matter rests, inasmuch as the other countries have not yet agreed to the final reservation above set forth. In 1929, however, a committee of jurists, representing many countries, drafted a stipulation which appeared to meet the American objection. This has been laid before the Senate and will be considered in due course.

General work of the League. Various important functions are given to the League of Nations by the terms of the covenant. Its Council is authorized to intervene in the early stages of any serious dispute between member nations and thus to prevent recourse to war. All treaties

between member nations must be reported to the League and registered, so that secret treaties may be eliminated. Certain territories which were taken away from Germany and Turkey at the close of the war are placed in the hands of the League to be governed under mandates which the League gives to member nations. Thus France has the mandate for Syria and Great Britain for Palestine. Countries holding mandates must report annually to the League on the administration of the mandated territories. The League maintains an International Labor Office and holds each year an international conference on labor problems. It has various responsibilities connected with the international protection of health. In addition to these, many other special functions are committed to it.

The allied debts. Some new and important interests in various parts of the world were also acquired by the United States as a result of the war—the allied indebtedness, for example. During this conflict, the United States loaned large sums of money to Great Britain, France, Italy, Russia, and other European countries. The total amount was about ten billion dollars, of which nearly half was loaned to Great Britain. These loans were made generously, in the midst of the great emergency. Nothing definite was arranged as to how or when they should be repaid. In view of the disorganized conditions in Europe immediately after the war, no requests for the payment of either principal or interest were made by the United States for some years after the war came to a close. In 1922, however, Congress authorized the acceptance of long term bonds from the debtor countries and the indebtedness owed by most of them has been funded in this way. These bonds are spread over a period of more than sixty years

and each issuing country pays to the United States so much per year.

How they are being paid. Anyone who understands the processes of international trade and finance will realize, however, that these payments are not made in money. As a matter of fact the loans from the United States were not obtained in money. What we loaned to these various European countries during the war was merchandise, not gold. We shall have to take repayment in some form other than gold—in merchandise or in securities—for there is not enough gold in Europe to pay us back. Meanwhile it should be clear that until these bonds are paid off by the various European countries, the United States will, in effect, hold a mortgage on Europe, and it is the practice of mortgage holders to keep a sharp eye on their invested funds. Great Britain, France, and the other debtor countries, expect to pay these loans out of the reparations made to them by Germany. If Germany does not pay Great Britain, France, and Italy, it will be harder for them to pay America. Even though the United States did not ratify the Treaty of Versailles, therefore, America has acquired a tangible interest in the pledges made by the German government for the fulfillment of that treaty. It is to the interest of the United States that Europe shall be kept at peace during the next half century. In fact, among all the nations of the earth the United States probably has the most to lose in the event of another great world war. The maintenance of peace, therefore, is the greatest of all American interests abroad.

The Dawes Plan and the Young Plan. The Treaty of Versailles did not fix a definite sum which Germany would have to pay as reparations for damage done during the

war. It left this sum for future determination in accordance with Germany's ability to pay. Much controversy arose over the fixing of the payments; but in 1924 a body of experts, commonly known as the Dawes Commission, worked out a plan for annual payments by Germany over a term of years. The German government paid the sums agreed upon under this plan until 1929 when another international board, known as the Young Commission, was appointed to make a further revision in the scale of payments. This revised plan is now in effect.

The Monroe Doctrine. Certain problems of national government are connected with the maintenance of a doctrine which the United States promulgated more than a hundred years ago. During the early part of the nineteenth century, various Spanish colonies in Central America revolted and declared their independence of Spain. They drove out the Spanish authorities and set up for themselves in each case a republican form of government. For a time, however, it appeared possible that a combination of European countries known as the Holy Alliance would assist Spain in the recovery of her South American territory. The government at Washington became alarmed over this possibility, and President James Monroe accordingly authorized the issue of a declaration setting forth the interests of the United States in this matter. The doctrine which has since borne his name may be briefly summarized as follows: The United States will not interfere with the existing colonies or dependencies of any European power in the western hemisphere. By the same token, it expects that European governments will refrain from interference with the independence or territorial integrity of those coun-

tries in the New World which have acquired their independence.

The legal and actual status of the Monroe Doctrine. This doctrine is not a part of international law; it is not even a law of the United States. It has never received the approval of the Senate, nor has it been officially recognized by the countries of Latin America whom it is intended to protect. On the other hand, the policy enunciated by the Monroe Doctrine has been vigilantly maintained by the United States for over a hundred years and it has now become one of the chief corner stones of American foreign policy. The United States claims and asserts the right to prevent foreign intervention in the affairs of the western hemisphere.

But every right involves a responsibility. If the United States insists that there shall be no foreign intervention in the affairs of Latin-American countries, does it not thereby obligate itself to protect foreign interests as well as its own?

Treaties of intervention. To a certain extent the United States has recognized and accepted this obligation. The national government has repeatedly used its good offices and has resorted to moral suasion in order to secure protection for foreign property and foreign citizens, as well as for its own, in various Latin-American countries. It has gone even further and has obtained by means of treaties with some of these countries the right to intervene on behalf of the maintenance of law and order. The fulfillment of these treaty provisions has necessitated the sending of marines to Nicaragua, Haiti, and Santo Domingo within recent years. But we may well raise the question whether the United States is wise in thus assuming the rôle of

police-~~man~~ for the entire western hemisphere. To do anything of this sort on a large scale must inevitably involve us in great expense and embarrassment.

Defence and disarmament. Many people feel that great armaments are the groundwork of militarism. They believe that large standing armies and naval forces are an incentive to warfare. The nation that keeps a sharp sword is under temptation to use it. On the whole, the history of European countries proves that there is some truth in this idea. Great armies are not merely an economic burden; they create suspicion and distrust among neighboring countries. During the quarter century which preceded the outbreak of the World War, the dangers involved in this maintenance of great armaments were recognized by many leaders of public opinion in Europe. In 1898 the Czar of Russia suggested that representatives from all the great European powers should come together and discuss the possibility of some means whereby these great armaments could be reduced. As a result of this action, delegates appointed by the chief governments of the world assembled at the Hague in 1899. This gathering was known as the First Hague Conference. It adopted a resolution affirming the desirability of disarmament, but did not formulate any definite plans. Eight years later a second Hague Conference was held, but it likewise came to no definite agreement on details. Hence no reduction in military or naval forces was achieved prior to the outbreak of the World War in 1914.

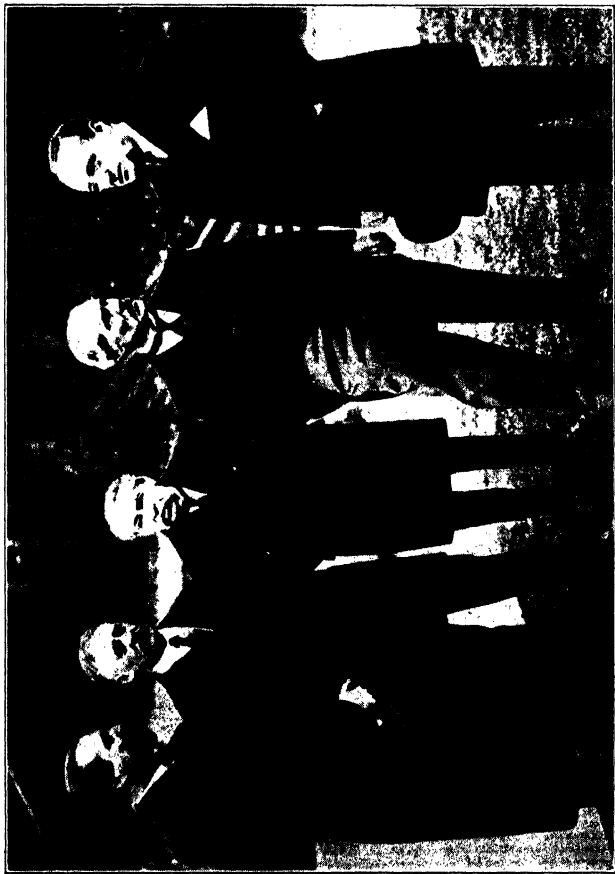
Disarmament conferences since the War. At the close of this war, however, it was generally agreed that the League of Nations should have as one of its prime purposes the reduction of armaments on land and sea. Accordingly

there was inserted in the Covenant of the League a provision that definite plans for military and naval disarmament should be drawn up and acted upon by the Assembly. Unhappily, this ideal, like many other international ideals, has proved much easier to enunciate than to realize. Two or three years passed without any action on the League's part. Then President Harding, in the summer of 1921, suggested that the chief naval powers should send delegates to a conference at Washington in order that some plan for limiting naval expansion might be agreed upon. At this conference the United States made a proposal that the building of capital ships, that is, great naval vessels, should be restricted to an agreed-upon tonnage during the next ten years. With some amendments, this proposal was accepted and it was then embodied in an international agreement. The parties to this agreement were the United States, Great Britain, France, Italy, and Japan. Since 1921, as a result of this conference, programs of naval expansion in these various countries have been greatly restricted as respects the larger naval vessels. But the agreement did not cover light cruisers, or submarines, or any of the lesser naval craft; hence the construction of such vessels has gone on at the usual pace. In 1927 the United States attempted (by means of a conference at Geneva) to secure an international agreement limiting smaller armed vessels also, but this attempt was not successful.

The Negotiations of 1929-30. After the inauguration of President Hoover in 1929, negotiations with Great Britain on this matter were resumed. The British prime minister, Ramsay MacDonald, paid a visit to the United States to discuss the problem. As a result the United States and Great Britain issued a joint invitation to the

other naval powers for a conference to be held in London. This conference was held during the early months of 1930 with representatives present from the United States, Great Britain, Japan, France and Italy. After prolonged negotiations the first three of these countries reached an agreement to extend until 1936 the general arrangements made at the Washington Conference with respect to the limitation of capital ships based upon the principle of Anglo-American naval parity. They also agreed upon various limitations with reference to their respective strength in cruisers, destroyers, submarines, aircraft carriers and other naval auxiliaries. But France and Italy could not reach an agreement upon specific limitations for themselves, chiefly because Italy demanded a position of naval equality with France, which the latter was not willing to concede. Hence these two countries were not included within the main provisions of the treaty, although they joined with the others in an agreement to humanize submarine warfare.

The Kellogg Treaty for the outlawry of war. Meanwhile, the French government transmitted to the United States a proposal that these two countries should agree upon a total outlawry of war. The Washington government approved this idea in principle, but suggested to France that such an agreement ought to include all the great countries of the world and should not be restricted to any two of them. Accordingly an invitation was extended, along much the same lines, to Great Britain, Germany, Italy, and about a dozen other countries. In transmitting this invitation, the government of the United States expressed its willingness to participate in a general covenant for the total abolition of war as a means of



DELEGATES AT THE LONDON NAVAL CONFERENCE, 1930

Left to right: Dino Grandi (Italy), Henry L. Stimson (United States), Aristide Briand (France),
Ramsay MacDonald (Great Britain), and André Tardieu (France)

settling international disputes. During August, 1928, the representatives of more than twenty nations met at Paris and there signed a solemn agreement that they would never again use war as a means of settling their controversies unless all other means of settlement failed.

North and South America compared. If you put the North and South American continents side by side, you will find some interesting similarities and some very striking contrasts. Both continents were colonized, approximately during the same period, by European nations. Both succeeded, after more or less difficulty, in releasing themselves from strict European control. The thirteen English colonies in North America fought a successful war of independence in the latter part of the eighteenth century; the various Spanish colonies on the mainland of Central and South America did likewise during the earlier part of the nineteenth. North America had her Washington; South America, her Bolivar. The winning of independence in each continent left a group of new states ready to be welded into a strong federal union.

Union and disunion. There the similarity ends. In North America the endeavor to form a union succeeded; in Central and South America it failed. North of the Rio Grande the entire territory has been combined into two federal unions, one with forty-eight states, and the other with nine provinces; south of the Rio Grande there are fifteen independent states which have never been able to combine themselves into any form of permanent confederation. The result is that a few of them are strong and the rest are weak. The weaker ones, moreover, have proved temptations to their more powerful neighbors and have presented opportunities for European intervention.

Latin-American relations. In their struggle for independence these various Latin-American territories had the moral support of the United States. And this support against the danger of further European control assumed tangible form when the Monroe Doctrine was promulgated in 1823. The Latin-American states appreciated this action on their behalf, and for the next quarter of a century the relations between North and South America continued to be friendly. Then came the war with Mexico which aroused some suspicions concerning the imperialistic aims of the United States; but this gradually subsided, and some years later (1865) the action of the Washington authorities in ordering the French out of Mexico did much to inspire new confidence.

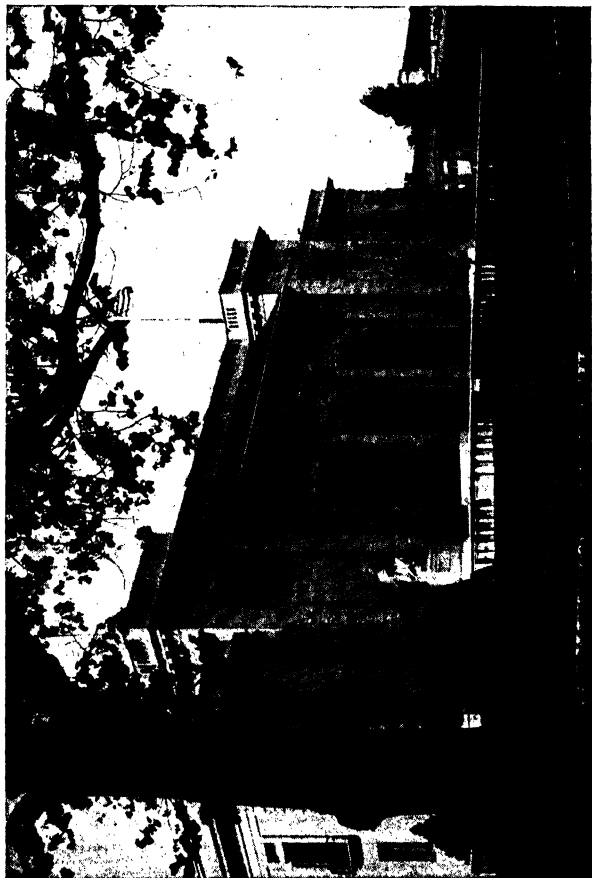
The Pan American conferences. During all these years, however, no attempt had been made to bring all the states of the New Hemisphere to a realization of their common interests, nor was any definite step taken in that direction until 1881, when Secretary Blaine proposed the first Pan American conference. Two South American states declined this invitation, and no conference was held until 1889. On this occasion it was agreed to establish a Bureau of American Republics in Washington, an institution which still exists (it is now called the Pan American Bureau) and has rendered useful service in fostering good relations among the various states. Several other Pan American conferences have been held since 1889, but relatively little in the way of united action has been accomplished at any of them.

The undercurrent of suspicion. The various Latin-American states have been suspicious of one another and somewhat afraid of their powerful northern neighbor,

despite the fact that the United States government, at the close of the Spanish War, fulfilled its Cuban promises to the letter. On several occasions within the past thirty years, moreover, the United States has intervened to prevent the coercion of various Latin-American countries by European powers. On the other hand, the giving of American support to Panama, when it seceded from Colombia (1903), the American intervention in Mexico (1914), and the occupation of Haiti-Santo Domingo, which still continues, have tended to create unfavorable impressions in the southern republics.

Reasons for it. The winning of Latin-American confidence has been a difficult task. No matter how disinterested the policy of the United States may be, it is hard for these southern republics to accept it as such. They fear that the United States desires to dominate South America as Great Britain and France dominate Africa or as Japan has tried to impose her will upon China. All the Central American and South American republics are of Iberian origin; all but one, indeed, are of Spanish origin. They have no affiliation with the United States in race, language, laws, or political traditions. Most of their trade relations have been with Europe. At the various Pan American conferences, even at the next to the last conference in 1922, the lack of affinity and the differences in point of view have been all too obvious.

How can it be allayed? By what means can more cordial relations with these Latin-American states be developed? Not by means of any general alliance or league. In 1916 President Wilson proposed that all the republics of North, Central, and South America should join in guaranteeing the absolute political independence and the



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THE PAN AMERICAN UNION BUILDING AT WASHINGTON, D. C.

Dedicated to the promotion of friendship among all the republics of the New World

territorial integrity of one another. He also urged an agreement for settling all disputes by arbitration. But the Latin-American states did not warm up to these proposals. They felt that an alliance or league of this sort would be like a partnership composed of one lion, three foxes, and a score of mice. The lion's wish would be law. But short of any formal agreement there are various ways in which the relations between the two continents may be made more intimate and more cordial. Trade is a promoter of international good feeling when it is carried on fairly and in the interest of both parties. There are great possibilities for the development of intercontinent trade. A scrupulous adherence to the policy of nonaggression is also an essential. And, finally, much may be done by the development of cultural relations; that is, relations in science, literature, and art.

Relations with the Far East. In ordinary usage the term *Far East* includes the Japanese and Chinese empires, Siberia and the other Russian territories north of China, and the Malay Archipelago south. Until a quarter of a century ago the interests of the United States, whether political or commercial, were relatively small in this part of the world. But the acquisition of the Philippines and the growth of American trade with the Orient have combined to alter the situation. Another factor which has impelled the United States to pay greater attention to the Orient to-day is the progress of Japan. The rapid growth of this empire in military and naval strength means that the United States has a rival for the mastery of the Pacific. During the nineteenth century the eyes of America were turned towards Europe; in the twentieth they will have to be turned towards Asia as well.

The problem of China. Apart from affairs in the Philippines, the problems of the Far East, so far as the United States is concerned, center around two present-day international phenomena: the weakness of China and the strength of Japan. China is a vast country with at least three or four times the population of the United States. Although nominally a republic its government is weak, inefficient, unable to exercise firm control over all parts of the country, and without effective means of national defence. Quite naturally, therefore, China offers a temptation to any strong country desiring exclusive trade advantages for itself. Her nearest neighbor, Japan, would speedily be able to secure entire control of the Chinese Republic and make China a vassal state were it not for the deterring influence of the other great powers of the world.

The open door policy. In 1899, after the close of the Spanish War, the government of the United States addressed a note to all the great powers urging that they agree to seek no further special trade advantages in China, that the integrity of Chinese territory be preserved, and that the principal of "equal and impartial trade" should be adopted. To this suggestion all the powers agreed. This policy thus accepted has become known as the policy of the *open door*, and until the outbreak of the World War it was substantially followed, except that the various powers retained the commercial advantages that they had already acquired.

Japan and her special interests. During this war, however, Japan attacked and captured Kiaochow, a port which had been leased by China to Germany for a long term of years, and this territory the Japanese continued

to hold after the war was over. Not until the Washington Conference of 1921 did Japan agree to give it up. In 1918, moreover, the government of Japan made a list of twenty-one demands upon China for special privileges, and although some of these demands were later modified or withdrawn entirely, several important privileges were wrung from the Chinese. In connection with these negotiations, the United States government gave assurance in the so-called Ishii-Lansing agreement that the United States would recognize the "special interest" of Japan in Chinese affairs. It is avowedly the policy of Japan to acquire, if she can, the same predominance in Asia that the United States has exercised in North and South America.

The conference on Pacific problems. Regarding it as highly desirable that all controversies affecting the Far East and the Pacific should be amicably settled, thus forestalling the growth of large naval armaments on both sides of the western ocean, President Harding in the summer of 1921 proposed that the Washington Conference should discuss these questions and should endeavor to secure a satisfactory solution of them. The Conference did so, and embodied the results of its negotiations in certain agreements, particularly in what is commonly known as the *Four Power Treaty*. By the terms of this treaty the United States, Great Britain, France, and Japan mutually agree to respect the integrity of each other's possessions in the islands of the Pacific. The nations represented at the conference also agreed to refrain from the erection of fortifications in certain places now unfortified. Out of the negotiations at Washington, moreover, came the agreement on the part of Japan to restore Kiaochow and the adjacent province

of Shantung to China. First and last, therefore, the Washington Conference succeeded in promoting an amicable agreement on most of the questions at issue. It did not, however, take up the question of Japanese immigration to the Pacific Coast of America, nor did it discuss the grievances of the Japanese immigrants already there. These matters are left for further negotiation through the regular diplomatic channels.

The wide scope of America's interests. From this brief and general survey some idea of the scope of American interests can be gained. But the preceding paragraphs have not listed them all. The people of the United States have a sentimental interest in many foreign problems where no economic considerations are at stake. Ireland is an example. America's interest in a just and peaceful settlement of the Irish question is not inspired by economic motives. It arises in large part from the sentimental desire to see a people, with whom there are close ties of kinship, attain contentment and prosperity. So with Poland and the new Slavic countries of Continental Europe. America would regret to see them lose a status of independence which was gained at so great a sacrifice.

There is no part of the world, in fact, to which the interest of the United States, direct or indirect, sentimental, political, or economic, does not now extend. The enormous strength and prestige of America, as disclosed during the war, have made a profound impression in every part of the globe and have given the United States a potent influence upon the destinies of mankind. The United States has become a world power of the first order. Whether the American people like it or not, that inexorable fact remains.

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QUESTIONS ON THE TEXT

1. Where and by whom was the League of Nations formed? What was President Wilson's part in it?
2. What were the main American objections to entering the League?
3. What nations are members of the League, and what nations are not? May a member of the League withdraw?
4. Explain the League organization—Council, Assembly, Secretariat.
5. What is the World Court? How is it organized? What is its jurisdiction? Explain the American reservations.
6. How are the Allied debts to the United States being paid? Why does this matter give us a special interest in promoting the peace and prosperity of Europe?
7. What was the Dawes Plan? How has it been revised?
8. How did the Monroe Doctrine originate? What is its scope? What responsibilities does it involve?
9. What progress in disarmament has been made during the past dozen years?
10. Explain the Kellogg Treaty for the outlawry of war.
11. What are our interests in Latin-America? How may we win and keep the confidence of countries in Central and South America?

12. What are our interests in the Far East and how may they be promoted?

QUESTIONS FOR DISCUSSION

1. In feudal times *trial by duel* was common. Then courts of law and jury trials developed. On the American frontier, in early days, we went through the same process. What is the application of all this to war and the World Court?

2. Has the League of Nations, since its establishment, performed services commensurate with the cost of maintaining it?

3. Has the extension of the Monroe Doctrine during the past hundred years been warranted? What does Latin America think of the doctrine? Is this attitude on its part justified?

4. Is it just to call the United States a *Shylock nation* because we insist on collecting the Allied debts?

5. In the next war should wealth as well as man power be drafted?

GLOSSARY

Define the following terms: conciliation; mediation; intervention; arbitration; outlawry of war; treaty; pact; international law; international organization; balance of power; open door; reservation; sphere of influence; secretariat; naval parity; five-five-three; freedom of the seas; League boycott; *status quo*; *persona non grata*; protectorate; advisory opinion; mandate.

TOPICS FOR ESSAYS

1. The Decisions of the Hague Tribunal. 2. The Rogers Act (1922). 3. The Freedom of the Seas. 4. "The Three Mile Limit." 5. The World Court. 6. The Work of the League of Nations. 7. The International Labor Office. 8. The Humanitarian Functions of the League. 9. The Mandate System. 10. The Free City of Danzig. 11. The Monroe Doctrine and the Venezuelan Boundary Case. 12. The Locarno Pact. 13. The Kellogg Treaty. 14. Article X of the League Covenant. 15. The Hague Tribunal. 16. The Problem of Disarmament. 17. The Christ of the Andes. 18. The Rush-Bagot Treaty. 19. American Treaties of Arbitration. 20. The

Alabama Claims. 21. The Celebration of a Century of Peace with Great Britain, 1915. 22. The Dawes Plan. 23. Latin America and the Monroe Doctrine. 24. The Drago Doctrine. 25. The Washington Conference of 1921.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the United States was wise in staying out of the League.
2. That the maintenance of the Monroe Doctrine involves responsibility for the maintenance of order in Latin America.
3. That the outlawry of war will not suffice to ensure world peace.

CHAPTER XV

THE GOVERNMENT OF OUTLYING POSSESSIONS

1. The Constitution of the United States (Fourteenth Amendment) provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." Congress, by law, has admitted Hawaiians to the full privileges of American citizenship. Nearly half the children born in Hawaii since the passage of this law have been of Japanese parents. Will these children, after they become adults, have the right to be admitted to California or other states, notwithstanding the provisions of the immigration law which exclude Japanese? If admitted, will they have a right to be registered as voters? Give your reasons.
2. Porto Rico is larger in area than Rhode Island. It has a much larger population than Nevada. It is nearer to Washington than Oregon is. Do you believe that Porto Rico can properly look forward to becoming a state of the Union? What advantages would it gain thereby? As between Porto Rico, Hawaii, and Alaska, which has the best hope for ultimate admission to statehood?
3. Some years ago Congress passed an act for the government of the Philippine Islands, commonly known as the Jones Act. The preamble of this act declares that it is the intention of the United States to grant Philippine independence as soon as a "stable government" can be established. Do you regard the following as essentials of a stable government? Why?
 - (a) Ability to defend the islands against attack
 - (b) Readiness to fulfill international obligations
 - (c) Absence of internal disorders
 - (d) Adequate protection to invested capital
 - (e) Elimination of graft and corruption
 - (f) Holding of fair and honest elections

- ~~4.~~ If the United States builds a canal through Nicaragua, should we acquire a zone or strip of territory as in Panama? What lessons from our Panama experience would be useful?
5. If France should offer to give us her Caribbean islands of Martinique and Guadeloupe in payment of the French debt to the United States, would you favor taking them? Why?

America as a colonizing power. The world does not think of the United States as a colonizing power in the sense that Great Britain is so regarded; nevertheless our whole history during the past three hundred years has been one of steady expansion. England developed colonies such as Canada, Australia, and South Africa. These colonies became federated dominions and were ultimately admitted to full membership in the British Commonwealth of Nations. The United States, on the other hand, began as a group of British colonies. For one hundred and fifty years these colonies represented the world's most important experience in peopling new areas. Then, having acquired their own independence, they proceeded to establish their own colonies or territories west of the Alleghenies, and these in turn were admitted one by one as states of the Union. Or, to put it another way, the thirteen original states, after they had grouped themselves into a new republic, proceeded to acquire land for colonization (through the Louisiana Purchase, for example), and ultimately built up these territories into states on an equality with themselves. The area of the United States is to-day ten times what it was in 1776. Its population is about forty times as great.

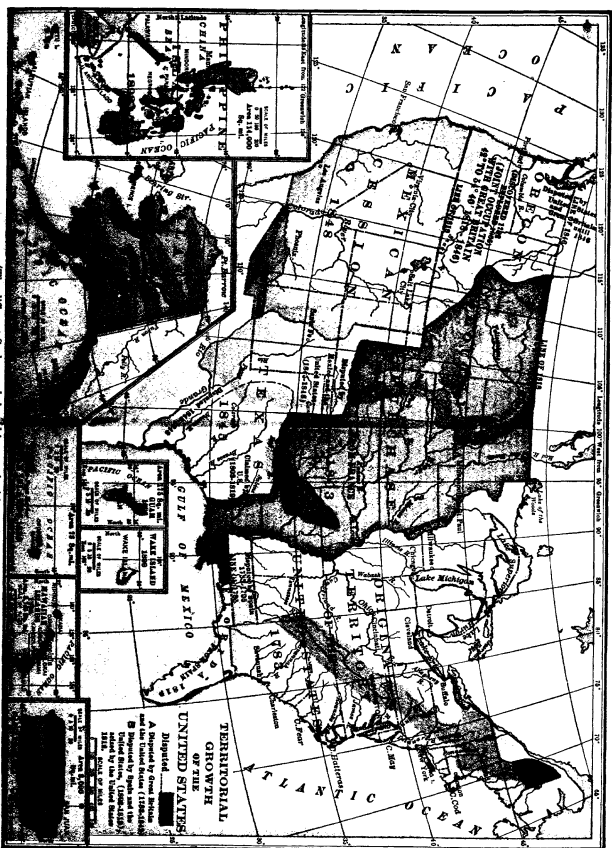
History of American expansion. The history of this expansion may be divided into two definite periods. The first extends from the Declaration of Independence to the

close of the Civil War. During this interval of less than a hundred years the United States acquired the Northwest Territory, as defined by the treaty of 1783; the Louisiana Territory by purchase in 1803; and Florida in 1819. Later, in 1848, great southern areas were secured by conquest from Mexico and by the admission of territories which had declared their independence of Mexico. Territorial adjustments were also made by treaties with Great Britain affecting the Canadian boundaries, and by the Gadsden Purchase from Mexico in 1853. All these additions were alike in one respect, namely, in being contiguous to land already owned by the United States; hence they did not impair the national solidarity. All were in the form of territory which could ultimately be developed into states of the Union, and all of it has been so developed. In this respect American experience has differed widely from that of Great Britain. Britain's outlying possessions, such as Hongkong, Zanzibar, Sierra Leone, and the Fiji Islands, are scattered all over the globe. Some of them are small and can never be admitted to full membership in the British Commonwealth. Others are in regions where no considerable white population can live.

The second period (since 1867). The second period of American territorial expansion, extending from the close of the Civil War to the present time, has been marked by developments of a different sort. First came the purchase of Alaska from Russia in 1867. By this purchase the United States acquired its first remote possession, for Alaska is a thousand miles away. Then, by the treaty of 1898, we acquired from Spain the Philippines, Porto Rico, and Guam. In the same year Hawaii was annexed to the United States at her own request. In 1900 a treaty with

Great Britain and Germany gave us certain islands in the Samoan group, and in 1904 the Panama Canal Zone came under American control. Finally, in 1917, the Virgin Islands were acquired by purchase from Denmark. These different acquisitions are all of them unlike those of the period preceding the Civil War in that they lie apart from the main territory of the United States and for that reason cannot be absolutely assured of admission to statehood at a future date. It would be practicable to admit Alaska, Porto Rico, Hawaii, and even the Philippines as states; but such action would be a departure from long-established policy and might not be wise. These various territories and islands are colonies in the usual sense of the term, although some are designated as insular possessions. This raises some interesting legal questions concerning them.

Constitutional status of the outlying possessions. The framers of the Constitution realized that the Union would eventually comprise more than the thirteen original states. Indeed they were aware of the fact that the Congress of the Confederation had already passed the Northwest Ordinance (1787) for the government of certain territories already belonging to the nation. This ordinance provided that the territory north and west of the Ohio River should be equipped with a territorial form of government, but with a definite understanding that it would eventually be admitted to the Union as states. Hence the Constitution made provision that new states might be admitted by Congress at its discretion, and that any territory belonging to the United States, pending its admission to statehood, should be governed in such way as Congress might direct. On the other hand, the Constitution did not, in express terms, give Congress the right to acquire new areas by



purchase or treaty; and in connection with the Louisiana Purchase it was argued that Congress did not possess any such power. The Supreme Court in 1810 settled this question by deciding that the right of Congress to acquire new territories outside the original limits of the United States was implied in its right to make war and to negotiate treaties.

The Constitution and the flag. But admitting that Congress has the right to acquire new territories in any part of the world, there are various legal questions which arise in this connection. Is the control of Congress over such territories complete, or is it limited by the provisions of the Bill of Rights in the Constitution? More specifically, is a Filipino or a Porto Rican entitled to freedom of speech, trial by jury, and due process of law by the mere fact that the American flag flies over his head? Do all laws passed by Congress apply to these islands, or do they apply only when so stated? Does a tariff law, for example, apply only to merchandise coming into the United States, or to all goods entering the insular possessions? All these questions have had to be settled by the Supreme Court at one time or another.

Decisions of the Supreme Court on these points. These decisions may be summed up briefly in the following way: The Constitution does not follow the flag. The inhabitants of the insular possessions are not citizens of the United States unless Congress expressly extends citizenship to them. All the guarantees of the Bill of Rights do not extend to such territories unless and until Congress so provides. The power of Congress over the outlying territories of the United States is much wider than over the states of the Union. As respects tariff laws, the Supreme Court has

held that duties may be levied upon goods coming from the insular possessions into the United States. On the other hand, it has held that Congress is bound to administer all the territories under the jurisdiction of the United States with due regard to those provisions in the Bill of Rights which are *fundamental*, that is, inherent in the nature of American government; but the Supreme Court, unfortunately, did not attempt to explain just which provisions are fundamental and which are not.

Rights of American citizenship in the outlying possessions. By action of Congress, the people of Porto Rico have been made full citizens of the United States. By treaty, Hawaiians have been given the same status. But the full privileges of citizenship have not yet been granted to inhabitants of the Philippine Islands. Filipinos are not citizens, but are known as *nationals* of the United States. This means that they are entitled to the protection of the American government in all international matters, but are not entitled to the privileges and immunities of citizens under the Constitution except in so far as Congress may grant such rights to them. Congress has, in fact, granted them most of the constitutional rights which American citizens possess, but not all of these rights; for example, it has withheld the "right to keep and bear arms."

Incorporated and unincorporated territories. A distinction, moreover, has been made by the Supreme Court between *incorporated* territories, that is, territories which are fully organized, and *unincorporated* territories which include all the rest. Alaska and Hawaii are defined as incorporated territories. They come under the jurisdiction of the Secretary of the Interior. All laws passed by Con-

gress apply to them. Porto Rico and the Philippines, along with the other outlying possessions, are classed as unincorporated territories. They are not under the jurisdiction of the Interior Department. They do not have regular territorial governments but are administered under special regulations. Acts of Congress do not apply to them unless there is a special provision to that effect.

The old territories. Before their admission as states the old territories (such as Wyoming, Washington, New Mexico, Arizona, and Oklahoma) were governed under laws passed by Congress. Each had a territorial governor appointed by the President, together with a territorial legislature, the members of which were elected by the people of the territory. This legislature, subject to the control of Congress, made the territorial laws and levied the taxes. So far as practicable it has been the desire of Congress to give the newer outlying possessions the same sort of territorial government that these older territories enjoyed.

Alaska and Hawaii. Alaska has a governor appointed by the President, and an elective territorial legislature. This legislature is made up of two chambers, the members of both being elected by the people. The territorial legislature has the usual lawmaking powers of a state legislature and its actions are subject to veto by the governor on the same basis. Alaska is represented in Congress by a delegate who has a seat but no vote. Hawaii likewise has a territorial governor who is appointed by the President. He is assisted in his work by various administrative officials who are appointed by the governor with the consent of the Hawaiian senate. The territorial legislature of

Hawaii consists of two elective chambers, a Senate and a House of Representatives. Like Alaska, Hawaii has one nonvoting delegate in Congress.

The government of Porto Rico. The present government of Porto Rico has its basis in various acts of Congress. These provide that the head of the island administration shall be a governor appointed by the President with the consent of the United States Senate. This governor is assisted by six heads of executive departments who form an executive council and assist the governor in an advisory capacity. Porto Rico has a legislature of two chambers. The Senate consists of nineteen members and the House of thirty-nine members. Members of both bodies are chosen by universal suffrage. The governor may veto any action of the island legislature, and if the legislature repasses it by a two-thirds vote, the measure goes to Washington where it is laid before the President. If the President does not disapprove it within ninety days it becomes effective. If he does refuse his assent, there is no way of passing it over the President's veto. Every measure enacted by the Porto Rican legislature must also be sent to Washington, where Congress has power to annul it; but as a matter of fact this virtually never happens. The Porto Rican legislature makes the appropriations for the support of the island government, but with the proviso that if the two chambers cannot agree among themselves, or if they disagree with the governor, the sums voted for the preceding year are deemed to have been reappropriated.

The government of the Philippines. By the treaty with Spain in 1898, the Philippine Islands were ceded to the United States. Military rule continued for about three years, during which interval a commission was sent to the

islands to study conditions and report upon a system of civil government. In 1902, after this commission had reported, a civil government was established and this system continued with some changes until Congress enacted the Jones Act of 1917. The present government, as established by this statute, may be outlined as follows: The chief executive power is vested in the hands of a governor-general who is appointed by the President of the United States with the consent of the American Senate. This appointment is not made for any definite term of years. Assisting him are heads of various administrative departments. The governor-general prepares the annual budget which is laid before the Philippine legislature for approval. If the legislature does not make the necessary appropriations, the sums appropriated for the previous year are deemed to have been made available. The governor-general may also veto any action of the Philippine legislature, and if the latter overrides this veto by a two-thirds vote, the issue is then referred to Washington, where the President has six months in which to decide it.

The island legislature. The Philippine legislature is made up of two chambers known as the Senate and the Assembly. The Senate has twenty-four members, of whom twenty-two are chosen by the voters in eleven senatorial districts, while the two remaining senators are named by the governor-general to represent the non-Christian provinces. The Assembly has ninety members, of whom eighty-one are elected by assembly districts for a three-year term while nine are appointed by the governor-general. These two chambers acting in concurrence have the usual powers of a territorial legislature, subject to the executive veto as explained in the preceding paragraph.

Suffrage, courts, and local government. Universal suffrage does not exist in the Philippine Islands. The right of voting is restricted to those who can read and write either English, Spanish, or a native language; or who own a certain amount of property; or who pay a certain minimum in taxes. The Philippine Islands have their own system of territorial courts, consisting of local courts, district courts, and a Supreme Court for the Islands. Under certain conditions, appeals may be taken from the last-named court to the Supreme Court of the United States. In addition to the regular insular government, the islands are divided into provinces, each with a provincial governor and certain administrative officials.

Philippine independence. The Jones Act, as has been said, declared the intention of the United States to grant independence to the Philippine Islands as soon as a stable government could be established therein. A few years later the governor-general of the islands reported to Washington that in his opinion this condition had been fulfilled. But the Washington authorities thought it well to have the question looked into by a special commission and this body, after an elaborate investigation, reported against the immediate granting of independence. The issue is not one of principle but of expediency. A promise of independence has been made in good faith and it must be fulfilled whenever the situation warrants; but one should bear in mind that the promise was not made unconditionally. The United States has never been, and is not now, under any pledge to grant independence to the Filipinos irrespective of their capacity to govern themselves. Thus the whole issue resolves itself into a question of what a "stable government" means. Many Filipinos believe that

they are now able to maintain such a government in all the essentials. But what are the essentials of a stable government? This is where the difference of opinion comes. The United States is in the position of a trustee holding these islands for the benefit of their own people. Some day this trust must terminate, but it would serve no good purpose to terminate it prematurely.

The minor possessions. In Samoa and Guam all governmental authority is vested in the hands of a commandant appointed by the Secretary of the Navy. The Panama Canal Zone, which is a strip of territory across the isthmus about ten miles in width, is administered by a governor appointed by the President of the United States. The Virgin Islands are under the Navy Department's control. Cuba is not an integral part of the United States nor is it a protectorate, although its foreign affairs are subject to some control by the government at Washington.

The government of Cuba. The reason for the special situation as respects Cuba is to be found in the fact that Congress in 1901 adopted the so-called Platt Amendment which stipulated that the United States might at any time intervene in Cuba if such intervention were needed to maintain peace and stability. This Platt Amendment was later incorporated in a treaty between the United States and Cuba and was also inserted as one of the provisions in the Cuban Constitution. On two occasions since 1901 the United States has intervened in accordance with the terms of this amendment. A somewhat similar provision has been incorporated in treaties made with Haiti, Santo Domingo, and Nicaragua. It is in accordance with these treaty provisions that marines have been sent to various Latin-American countries.

The government of the District of Columbia. The Constitution provides that Congress shall exercise exclusive jurisdiction over the territory occupied by the national capital. This territory, known as the District of Columbia, located on the Potomac, was originally ceded to the United States by Maryland (1788) and the Virginia portion being retroceded to that state in 1846. The District of Columbia has no local self-government. Its administration is in the hands of three commissioners appointed by the President, one of whom must be an army engineer. Laws for the District are made directly by Congress and so are the appropriations for carrying on the District government. On all such matters, however, Congress is advised by a special committee known as the Committee on the District of Columbia. Half the cost of governing the District is paid from the national treasury; the other half is levied upon the District by taxation. Inhabitants of the District of Columbia are entirely disfranchised. They have no vote for president, since the District is not entitled to any presidential electors. They have no senators, no representatives in Congress, no mayor, aldermen, or councilors. The only way in which any resident of Washington ever manages to exercise his suffrage is by being a legal resident of some other place. That is what many of them do, especially those who are occupants of governmental positions. On election day they go back to the states from which they have come and cast their vote, or, in some cases, they are allowed to send their ballots by mail.

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QUESTIONS ON THE TEXT

1. What are the two periods in the history of American territorial expansion? Explain what happened in each.

2. How has the expansion of the United States differed from that of Great Britain during the past hundred years?

3. The Northwest Ordinance gave direction to American expansionist policy. How?

4. Does "the Constitution follow the flag"?

5. To what constitutional rights are the inhabitants of the insular possessions entitled?

6. Distinguish between the incorporated and unincorporated territories.

7. May Congress tax imports from the Panama Canal Zone? Explain. Could it abolish freedom of worship in Hawaii? Why?

8. How is Alaska governed? Under what department at Washington does it come?

9. May the President veto an act passed by the legislature of Porto Rico, and can such an act be repassed over his veto? Explain.

10. Describe the government of the Philippines. What happens if the legislature does not make the necessary appropriations?

11. Is Cuba an American "protectorate"? If not, what is the relation?

12. If you were a resident of Washington, D. C., would you have a vote at any election? If so, how?

QUESTIONS FOR DISCUSSION

1. "Colonies are a source of weakness rather than of strength to a nation." Do you agree?

2. Would it have been better for Cuba and for the United States if we had annexed Cuba after the Spanish War? Why or why not?

3. When a Filipino comes to the United States and settles here, is he entitled to vote? If he is not a citizen, can he be naturalized as one?

4. Why should statehood be given to Rhode Island and not to Hawaii?

5. Is it wrong to lay duties on imports from the Philippines? Does the Volstead Law apply to these islands? If not, ought it to do so?

TOPICS FOR ESSAYS

1. Porto Rico and Jamaica—A Comparison of Their Governments. 2. America in the Philippines and England in India—A Comparison and Contrast. 3. The Negotiations for the Building of the Panama Canal. 4. American Intervention in Haiti, Santo Domingo, and Nicaragua. 5. Relations with Cuba since 1900. 6. The Monroe Doctrine and American Expansion.

SUBJECTS FOR DEBATE**RESOLVED:**

1. That the Platt Amendment should be repealed.

2. That the Philippines should have complete self-government.

3. That Congress should grant home rule to the District of Columbia.

CHAPTER XVI

THE PLACE OF THE STATES IN THE UNION

1. During the great debate which took place on the floor of the Senate in 1830, Daniel Webster argued that the Constitution was an agreement among the people of the United States in their collective capacity. He quoted words of the Constitution to support his contention. Senator Robert Y. Hayne, on the other hand, declared that the Constitution was a compact among the states and left the people of each state sovereign. He also quoted from the Constitution in support of this assertion. What were the conclusions from each doctrine as respects the permanence of the Union? What were the quotations? With which of the debaters do you agree?
2. A series of riots, in connection with a coal strike, take place in Scranton, Pennsylvania. The strikers stop the railroad trains and take all the coal away from the locomotives. The governor of Pennsylvania declares that the state police can handle the situation and informs the Washington authorities that he does not want Federal troops sent into his state. Nevertheless, the Secretary of War, by direction of the President, sends a detachment from the regular army to protect the trains passing through the city. Has he the right to do this? Produce the constitutional provision in support of your answer.
3. Suppose two sections of California, North and South, agree to set up separate states. Each adopts a state constitution, elects its own governor, and establishes its own legislature. Congress, however, refuses to admit the two sections to the Union as separate states. What is there to prevent the maintenance of the two state governments, so long as the people of each section are willing?
4. The laws of Massachusetts require that a will, in order to be valid, must be signed in the presence of three witnesses. The laws of California require only two witnesses. A resident of

- Massachusetts, during a short visit to California, signs his will in the presence of two witnesses only. The will is offered for probate in Massachusetts. Does the "full faith and credit" clause of the Constitution require the Massachusetts courts to accept such a will as valid?

A republic of republics. There are two sorts of republics, *national* and *federal*. A national republic is one in which the smaller divisions are merely administrative subdivisions of the whole nation and possess only such powers as are granted to them. France, for example, is a national republic. A federal republic, on the other hand, is made up of states each of which possesses its own independent power. In a federal republic, all powers are granted by the states to the nation; in a national republic all powers are granted by the central government to the states or provinces or other divisions. It is not accurate to say that the American Republic is divided into states. To put it correctly we must say that forty-eight states are joined together into the American Republic.

This is not a "distinction without a difference." It impresses upon our minds the important fact that all powers possessed by the national government of the United States have been granted to it by the individual states, and that it has no powers save such as have thus been bestowed. True enough, the national constitution begins with the words: "We, the people of the United States . . . do ordain and establish this Constitution"—but wait a moment! Just turn to the last article of the Constitution and you will find that it is also an agreement "between the *states* so ratifying the same."

The sovereign states. For this reason it is customary to speak of the "sovereign states," but unless this state-

ment is clearly qualified, it will prove to be misleading. Here is the situation: Prior to July 4, 1776, there were thirteen colonies. Obviously they were not then sovereign, for they were in allegiance to Great Britain; but on that day these colonies declared themselves to be free and independent states, each entitled to control its own government. Then they made good their claim to independence by force of arms, and each state adopted its own constitution. During this transformation period, these thirteen states were subject to no formal limitations upon their independence, but presently they ratified the Articles of Confederation in which they all agreed to accept certain restrictions upon their sovereignty. Later, in 1787-1788, they surrendered various other powers when they ratified the national Constitution. By this action they parted with much of their sovereign authority and gave it to the new national government; but they stipulated that all powers not so granted should be reserved to themselves.

What state sovereignty means. If, by the term sovereignty, we mean the possession of absolutely unlimited political powers, then the states are not sovereign. On the other hand, if we mean by sovereignty the possession of complete authority over certain things, then the states of the Union are sovereign states. It is all a matter of definition. Chief Justice Marshall stated the situation in terse language more than a hundred years ago when he said that "the powers of sovereignty are divided between the government of the Union and those of the states. They are each sovereign with respect to the rights committed to it and neither is sovereign with respect to the rights committed to the other." Sovereignty is sometimes said to be indivisible by its very nature, but in the United

States it is divided, and the division keeps the Supreme Court busy.

From thirteen states to forty-eight. Eleven states ratified the Constitution and came into the Union before the inauguration of Washington as first President of the United States in 1789. North Carolina did not ratify the new Constitution until the autumn of the same year, and Rhode Island held out until the spring of 1790. During the next ten years, three new states were admitted—Vermont, Tennessee, and Kentucky. Then, in the half century between 1800 and 1850, fifteen more were brought in, and that record was almost equalled in the second half of the nineteenth century, 1850 to 1900, when fourteen additional states were admitted. The last three, Oklahoma, New Mexico, and Arizona, have become states since the beginning of the twentieth century. Thus the process of carving all the territory into new commonwealths has been accomplished in about one hundred and fifty years. There is no more territory to be so divided within the continental boundaries of the United States, and hence no more states to be admitted within this area, unless some of the larger existing states are split up into smaller ones.

The legal equality of the states. The forty-eight states of the Union are very unequal in size and population. Texas is a hundred times the size of Rhode Island and New York is nearly a hundred times as populous as Nevada. But whatever the differences in area and population, all the states are equal before the law; they have the same rights and are subject to the same limitations. There is no legal right possessed by New York or Texas which does not belong to Rhode Island and Nevada as well. No state has any special privileges as a member of the Union.

The national government is not permitted to give favors to one state while denying it to the others. The Constitution gives to all the states certain guarantees, forbids them to do certain things, requires them to do others, and in general determines their place in the nation.

What the national Constitution guarantees to the states.

There are two such guarantees. The *first* is the guarantee of "a republican form of government." The Constitution does not explain just what constitutes a republican form but it is reasonable to assume that the founders of the republic had in mind the general type of government existing in the original states at the time the national Constitution was adopted. That is to say, the Constitution does not guarantee any particular type of government so long as it is republican in its essentials. A state government with a hereditary emperor as its chief executive would obviously not be republican; but a state could maintain a republican government with a legislature of only one chamber, if so desired. Within the general boundaries of a "republican" government, each state can make its own rules as to the election of its officers, their terms, their powers, and their duties.

In the *second* place, the national Constitution guarantees to the states protection against invasion and against domestic violence. In case a state is invaded, the national government does not have to wait for an invitation before it can send troops into the state; but in the case of domestic violence—that is, in the event of riots or other internal disorder—the central government must await an invitation from the state legislature (or from the governor if the legislature is not in session) before it intervenes. Nevertheless, the national government may step in and quell disorder

without an invitation from the state legislature or from the governor if such local violence is interfering with the proper exercise of any national function, such as the carrying of the mails, the regulation of interstate commerce, or the collection of the Federal revenues. The Supreme Court has held that wherever the national government possesses a power, it has the right to exercise that power regardless of what any state may think about it.

What the national Constitution prohibits. Again, the national Constitution forbids the states to do certain things. For example, it forbids their legislatures to pass bills of attainder, *ex post facto* laws, or laws impairing the obligation of contracts. It prohibits the granting of titles of nobility by the states. It forbids the states to enter into any treaty or alliance without the consent of Congress, to coin money or issue paper money, to make anything but gold and silver a legal tender in payment of debts, to lay any duty on imports or exports, to keep troops or ships of war in time of peace without consent of Congress, or to engage in war on their own account unless in imminent danger of invasion. In addition to these general prohibitions, the Fourteenth Amendment forbids the states to deprive any person of property without due process of law, or to pass any law which abridges the privileges or immunities of citizens of the United States, or to deny to any person within its jurisdiction the equal protection of the laws. The Fifteenth Amendment prohibits the states from denying the rights of suffrage to any citizen of the United States on grounds of race, color, or previous condition of servitude; while the Nineteenth Amendment forbids them to restrict the suffrage on grounds of sex, in other words, it compels them to grant voting privileges to women.

Nature of these limitations. Some of these limitations are of a technical sort and there has been much controversy concerning them. On many occasions the Supreme Court has had to decide what is meant by "due process of law," and the "equal protection of the laws." During the past fifty years it has rendered more than six hundred decisions bearing upon these clauses. Of course it would be impossible to give even a summary of these decisions here. In a general way, the terms mean just what any person of ordinary intelligence would construe them to mean. Citizens of the United States must be given a "square deal" by the states, or the Federal courts can be called upon to secure it for them.

What the national Constitution requires the states to do: full faith and credit. The national Constitution also requires the states to do certain things. In the first place, it requires that "full faith and credit shall be given in each state to the public acts, records, and proceedings of every other state." This means, in a general way, that when a civil case has been tried by the courts of the state having jurisdiction over it, the judgment of that court will be recognized and enforced by the courts of every other state. It also means that if two persons make a contract which is valid in the state where it is made, under the laws of that state, this contract will be recognized as valid by all other states. The same thing is true of a will, or a deed, or a mortgage, or a note. To be valid in any state, however, a deed must be executed according to the law of the state where the land is located, and a will must conform to the laws of the state in which the signer of the will is a legal resident. The same principle applies to marriage or divorce. Every state has its own marriage laws and its own divorce

laws. If a marriage is legal in the state where the ceremony has been performed, it is legal throughout the United States. If a divorce is granted by one state having proper jurisdiction, that divorce must be recognized by all the other states even though a divorce would not have been granted on the same grounds, or with the same evidence, somewhere else.

The extradition of criminals. Another requirement relates to the surrender of criminals. Here is the provision of the national Constitution bearing on this matter:

“A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state shall, on demand of the executive authority of the state from which he fled, be delivered up to the state having jurisdiction of the crime.”

At first glance this provision looks simple, but it is by no means so simple as it looks. Broadly, it means that a person who has been indicted for a crime in one state, and makes his escape across the boundary into another state, can be brought back for trial. Bear in mind that a person cannot be tried for any violation of a state law except in the state where the law has been violated. If he commits an assault in Pennsylvania, he cannot be tried and sentenced for it in Maryland. Accordingly, if there were no way of bringing a fugitive back to the place where the offence was committed, he would go scot free. So the Constitution provides that the governor of the state where the crime was committed may send a requisition to the governor of the state into which the accused person has fled, asking for his return in custody. This request is ordinarily complied with; but if the governor refuses to hand up a fugitive from justice, no matter what his reason for doing so may be, there is no way of forcing the governor's hand.

Some difficulties in extradition. Occasionally a governor has declined to honor a requisition on the ground that the fugitive might not receive a fair trial in the state from which he had fled—for example, a negro in some Southern state. Difficulties have also arisen in the case of persons who have committed crimes but are not fugitives from justice. Suppose a person fires a shot across the state boundary line and kills some one on the other side. If charged with manslaughter, where would he be tried? Could he be extradited into the state where the bullet took effect? How about the aviator who flies over a state and violates its laws by dropping something from his plane? Or the woman who sent a parcel of poisoned candy through the mails? Are they fugitives from justice and can they be extradited for trial? It will be seen from these examples that the extradition clause has some complications in it.

The national government and the states. Although the Constitution intended that the national government and the states should each be independent of one another as respects their powers and functions, it places no obstacles in the way of their coöperation when they desire to coöperate. Within recent years there has been a good deal of such coöperation. For example, the national government and most of the states are now exercising concurrent powers with respect to the enforcement of the Eighteenth Amendment. Congress has also passed a series of laws providing for grants of money to the states, usually on a fifty-fifty basis, to be used in carrying out certain projects which the national government does not feel like undertaking for itself, and indeed could not legally undertake.

Grants-in-aid. As another example, Congress has appropriated large amounts of money to be used in the

building of certain main highways in coöperation with the states, the latter bearing an equal share of the cost. It has also appropriated money for the encouragement of vocational education, with the provision that the states shall appropriate equal amounts and shall have immediate supervision of the work. Such grants-in-aid are likewise provided in certain fields of public health, more particularly in connection with maternity benefits. In these various ways, the national government is being brought into closer contact with the several states and is acquiring a certain degree of control over matters which have been regarded as within the sphere of state action alone.

How new states are admitted. The Constitution does not lay down any rules for the admission of new states into the Union. It merely provides that new states shall be admitted by Congress, with the stipulation that no new state shall be formed or erected within any old state, nor shall any state be formed by the junction of two states or parts of states, without the consent of the legislatures concerned. As a matter of fact, the process of admission to statehood is relatively simple. The usual first step is the presentation of a petition to Congress from the people of a territory, asking that they be organized into a state of the Union. If Congress views this petition favorably, it passes an Enabling Act authorizing the people to hold a constitutional convention and draw up a state constitution. This state constitution is next submitted to the people of the territory, and if accepted by them, it is submitted to Congress. Then Congress can by resolution declare the territory to be a state, in which case its senators and representatives are admitted to the national legislature.

Can conditions be imposed? In considering the appli-

cation of a territory for admission to statehood, the President and Congress may exact certain conditions before it passes favorably on the application. They have full discretion to admit a new state or to deny such admission. In 1894, for example, Congress declined to admit Utah as a state until polygamy had been legally abolished, and a pledge given that it would remain forever abolished. In 1910 President Taft declined to sign a measure admitting Arizona until a provision for the recall of judges which had been placed in the proposed constitution of that state had been stricken out. But once a state is actually admitted, it can change its own constitution as it pleases, because once a state is within the Union, there is no way of expelling it. Arizona, for example, at once reinserted in its constitution the provision to which the President had objected. In only one instance has a new state been created from a portion of an older state; namely, West Virginia during the Civil War. But where the state legislature consents, there is no constitutional barrier to a division, and it is possible that a few of the larger states may some day find it advisable to divide themselves into smaller ones.

Powers of the states. The powers possessed by the states are not enumerated in the Constitution or in any other formal document. They could not be so enumerated inasmuch as they form a residuum; in other words they include every power which has not been granted to the national government or forbidden to the states by the terms of the Federal Constitution. In general, however, the powers of the states include the right to make most of the civil and criminal laws; the control of local government (in counties, cities, towns, and townships); the supervision

of all schools; the protection of life, health, and property; the care of the insane; the regulation of all trades and professions within the state; and the levying of taxes for its own use. Each state has the right to regulate commerce within its own borders, but it has no control over interstate commerce. It can regulate industry and labor within its own borders, even though the products of such industry are to be shipped into other states. People sometimes imagine that the powers of the national government, being nation-wide in scope, are of paramount importance; but it is the power of the state that comes closest to the lives and occupations of the great body of citizens.

The state constitution. It has been pointed out that before any territory can be admitted as a state, it must frame and adopt a constitution. This constitution is drafted, as a rule, by a constitutional convention which is composed of delegates elected by the people of the state. Such a convention is called whenever a territory applies to enter the Union, and thereafter another convention may be called whenever a revision seems desirable. Usually there is an interval of ten or more years between such constitutional conventions in the states, and sometimes an interval of thirty or forty years. If only slight alterations in a state constitution are needed, it is not necessary or usual to call a convention. Individual amendments can be made by action of the state legislature, subject to ratification by popular vote, or by using the initiative and referendum, as will be explained a little later.¹

What the state constitutions contain. State constitutions are rather lengthy documents, much longer than the Constitution of the United States. In early days they were

¹See pp. 355-357.

short, but they have been gradually growing more elaborate. The national Constitution covers only a dozen pages and can be read in half an hour, while the constitution of Oklahoma (for example) occupies a hundred pages in print. It has become the tendency in recent years to put into the state constitution many things which were formerly left to be dealt with by action of the state legislature—for instance, the regulation of state banks and insurance companies, the control of the schools, and even the salaries of state officers such as the auditor, or the commissioner of education, or the superintendent of highways. At any rate, a state constitution outlines the form of government, prescribes the powers and duties of the various state departments, prohibits the legislature from doing certain things (such as changing the state capital), and guarantees certain fundamental rights to the citizens. There they ought to stop, but many of them also contain long provisions relating to the control of county and city government, the methods of borrowing money, and even the details of legislative procedure. When this is the case a state constitution, by the rigid nature of its provisions, may become a hindrance rather than a help to the process of government. But after all, the best way to get a correct idea of what a state constitution contains is to glance through one of them, and the constitution of any state will suffice for that purpose.

How state constitutions are amended. State constitutions are amended very freely. In some states amendments are added almost every year, and not infrequently several amendments are added at a time. There are two ways of amending a state constitution. The first, which can be used in nearly all the states, is by concurrent action of the

state legislature and the people. The legislature takes the first step by proposing the amendment; then the people at the polls either accept or reject this proposal. In some states it is required that the legislature, when proposing an amendment, must pass it at two successive legislative sessions, or by a two-thirds vote, or must conform to some other special requirement. The second method of making amendments is by direct action of the people without the intervention of the legislature. This involves the preparation of a petition setting forth the amendment that is desired. Then the petition must be signed by a sufficient number of registered voters. If enough signatures are obtained, the proposed amendment is submitted to the people at the next election, and if it is accepted by a majority of the voters, it goes into effect. This method of amendment, known as amendment by means of the initiative and referendum, is used in less than half the states. It cannot be employed without first having a provision in the state constitution permitting its use.

Summary. It may be well to summarize, in a series of brief statements, the main principles which have been set forth in the foregoing pages. The states are sovereign within their own fields of jurisdiction. They are equal before the law. By the national Constitution they are guaranteed a republican form of government, assistance against foreign invasion, and help in maintaining order. They are also forbidden to do certain things and must maintain faith and credit among themselves. In some cases the national government and the states cooperate in the endeavor to secure ends which both desire. New states can be admitted to the Union and Congress may impose conditions at the time of admission; but once in

the Union, a new state has the same sovereignty and powers as the older ones. These powers cover a wide range, and being residual are constantly growing. The basis of state government is the state constitution, which is usually framed by a constitutional convention and adopted by the people. Amendments to this constitution are ordinarily proposed by the state legislature and ratified by the voters, but in many of the states they can be secured by using the initiative and referendum. Most state constitutions are too long and too cluttered with details. We should get back to the original idea of a constitution as a fundamental law, dealing with the basis of government only, and not with things which can well be regulated by the ordinary laws.

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QUESTIONS ON THE TEXT

1. What is a national republic? A federal republic? What is a republican form of government?
2. What is a "sovereign state"? Are all the states of the Union equal before the law? If so, give illustrations of this equality.

3. What does the national Constitution guarantee to the states of the Union? If a state were to abolish its legislature and set up an elective commission of five men to make all its laws, would its form of government be unrepblican? Why? What if it replaced its governor by an appointive *state manager*?

4. Make a list of the things that the national Constitution prohibits the states from doing.

5. What does the national Constitution require the states to do? Give illustrations of what is meant by the "full faith and credit" clause of the Constitution.

6. What is extradition? What is the procedure by which a fugitive from justice is extradited? Must the state to which he has fled always give him up? What are some of the complications which arise from the words "who shall flee from justice and be found in another state"?

7. Name some matters on which the national and state governments act separately and some on which they coöperate.

8. Must Congress admit a territory to statehood whenever the territory applies for admission? Must states be governed as territories before they can be admitted to the Union? What were the provisions of the Northwest Ordinance of 1787? What was its importance?

9. Where do the states get their powers? Why were they not listed, like the powers of Congress, in the national Constitution? Why are they not enumerated in the state constitutions?

10. What things are prohibited by the Constitution to both the national and state governments?

11. Where the Constitution grants Congress a certain power, may any state prevent this power from being exercised to the detriment of the state? For example, if Congress decided to turn into a naval depot the only good harbor that a state possesses, could the state prevent this being done? Give your reasons.

12. Describe the procedure by which a state is admitted to the Union?

13. If New York City desired to become the State of Manhattan, how would it proceed?

14. Can two or more states enter into a treaty? Explain.
15. How is a state constitution amended?

QUESTIONS FOR DISCUSSION

1. In 1861 the State of Virginia seceded from the Union. But the forty-eight western counties of the state favored the abolition of slavery and applied for admission to the Union as a separate state. They were admitted as West Virginia, without Virginia's consent. In view of the provision in the Constitution of the United States (Article IV, Section 3) how could this be done? What other states were admitted to the Union without being first governed as territories? Explain the circumstances in each case.

2. Before 1783 the United States was entirely composed of territory lying east of the Alleghenies. To-day the country extends from ocean to ocean with Canada on the north and Mexico on the south. In addition there are various outlying possessions. Under what provision of the national Constitution has this expansion been made? Explain what has been acquired by (a) treaty, (b) conquest, (c) purchase, (d) voluntary application for admission, (e) boundary arbitrations.

3. In the Swiss Constitution there is this provision: "The Cantons (states) preserve the right of concluding treaties with foreign states concerning the administration of public property, the patrolling of borders and police relations; but these treaties must not contain anything detrimental to the interest of the Confederation or to the rights of the other Cantons." Moreover, "the Cantons may negotiate with the authorities of a foreign state relative to the objects mentioned in the preceding Article." Would such treaties and negotiations by the states with foreign countries be possible under the Constitution of the United States?

4. John Doe is a bank cashier in Philadelphia. A shortage is found on his accounts and he is arrested. But he explains the figures to the satisfaction of the bank officials and is released. Thereupon he resigns as cashier, goes to Detroit, and gets another position there. A little later, in checking over the figures once more it is discovered that his explanations were fraudulent and that he had in fact embezzled the bank's funds. He is accordingly indicted in Philadelphia

~~and~~ the governor of Pennsylvania asks for his extradition. Doe's lawyer argues to the governor of Michigan that his client should not be extradited because he did not "flee from justice." What is your opinion? Would the fact that he was cashier of a national bank make any difference? Could he be tried in Detroit?

5. The United States concludes a treaty with Mexico providing that citizens of each country shall have the privilege of owning land in the other. Could the Constitution of Texas make a valid provision to the effect that no Mexican citizen may own land within ten miles of the border without first obtaining permission from the Adjutant-General of the state? Could it provide that land owned by Mexican citizens in Texas shall be taxed at a higher rate than land owned by American citizens? Does the Constitution of the United States lay down any rule on this latter point?

EXERCISE IN DEFINITIONS

Frame definitions of the following terms: nation; allegiance; republic; federation; sovereignty; domestic violence; obligation of contracts; *ex post facto* law; bill of attainder: equal protection of the laws; title of nobility; full faith and credit; constitutional amendment; republican form of government; extradition; fugitive from justice; initiative and referendum.

TOPICS FOR ESSAYS

1. The Organization and Work of a State Constitutional Convention. 2. An Analysis of a State Constitution, under the following heads: (a) Organization of the Legislature, (b) Powers of the Governor, (c) State Departments, (d) the Bill of Rights. 3. The Model State Constitution Prepared by the National Municipal League as Compared with the Constitution of Your Own State. 4. A Comparison of the Rules Relating to the Extradition of Criminals (a) from Foreign Countries and (b) from One State of the Union to Another. 5. The House of Governors. 6. The States as Agents of the Nation during the World War.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the national government ought to have the residuum of powers.
2. That when a provision of a state constitution, on a matter within the residual powers of the state, comes into conflict with a treaty, the state constitution should prevail.
3. That states should be permitted to make treaties among themselves without the consent of Congress.

CHAPTER XVII

THE STATE LEGISLATURE

1. Forty years ago the legislative branch of city government was almost everywhere divided into two chambers commonly known as the board of aldermen and the common council. This system has now been abolished by all our large cities. Every one of them now has a city council of a single chamber. (Possibly New York is an exception, if the Board of Estimate is regarded as a branch of the city council.) Yet some of these cities have larger populations, and spend more money, and have more difficult problems than some of the states. Chicago, for example, outranks in population such states as Nevada, Wyoming, Arizona, New Mexico, Delaware, and Rhode Island. Is there any good reason why small states should have two legislative chambers when large cities get along with one? If so, what is the reason?
2. The framers of a new state constitution are discussing the question as to whether a limit should be placed upon the length of legislative sessions. One suggests a limit of sixty days every two years. Another proposes that there shall be no fixed limit but that members of the legislature be paid twenty-five dollars per day, not exceeding sixty days; with permission to continue in session without pay for additional days if necessary. A third argues that the legislators ought to be paid a flat sum per annum and that the governor should be empowered both to call them together and to adjourn their sessions at will. Which of these plans seem preferable?
3. The following restrictions upon the powers of the legislature are sometimes inserted in state constitutions. Which ones do you approve? (a) No bill (except the budget) shall deal with more than a single subject; (b) after the close of a session the governor shall have thirty days in which to sign or veto a bill; (c) no state bonds shall be issued until after a vote of the people; (d) no

member of the legislature shall be appointed by the governor to any office until after his term has expired; (e) no legislative committees may sit unless both houses of the legislature are in session; (f) no member of the legislature may appear before any state commission as an advocate or opponent of any matter under consideration by such commission; (g) there shall be no amendment to a city charter unless requested by the city. Give reasons.

4. If you were a member of the state legislature and a measure came up which you personally approved, but which you felt sure a large majority of the voters in your district disapproved, which way would you vote? You believe in compulsory vaccination, for example, but feel sure that most of the voters in your district do not. Would you follow your own convictions, or would you subordinate them to the wishes of those whom you were elected to represent? Give your reasons.

Importance of state legislatures. Every state has a legislative body with the function of making laws. Most people look upon these state legislatures as subordinate lawmaking bodies, concerned mainly with minor questions; in other words, with matters which are not of sufficient importance to engage the attention of Congress. It is true, of course, that state legislatures deal with such matters as the making of rules for traffic on highways, sanitary and building regulations, the pay of jurymen, the purchasing of school supplies, and other things which the average citizen regards as of minor consequence. But not all the work of state legislatures is of this character. Much of it is fundamentally important. Indeed, it is the state legislatures that supply most of the motive power in American government. Without action by the state legislatures it would not be possible for the national government to function. A President could not be elected, for example, nor a Congress, nor a city council, for it is the state legislatures

that provide the entire elective machinery. They determine how the candidates shall be nominated, how voters shall be registered, where the polls shall be located, and how the results shall be certified. Directly or indirectly these state legislatures are probably responsible for at least four fifths of the laws under which the people live.

Their organization. The organization of the state legislature differs from state to state, but in essential features it is everywhere the same. In every state of the Union the legislature is made up of two elective chambers. The upper chamber, known as the senate, is the smaller of the two. Its members are elected from senatorial districts, and their term of office is either two or four years. The lower chamber is variously known as the house of representatives, or the legislative assembly, or the house of delegates. It is always larger than the senate, its members being chosen from smaller districts; and their term of office is usually shorter, being only two years in most of the states. But the powers of the two houses are substantially the same, except that in most of the states the right to originate revenue measures rests exclusively with the lower chamber. This, however, is not a matter of great practical importance because the state senate can amend such revenue measures in such way as virtually to write a new bill.

Reasons for the two-chamber system. Why have all the states adopted this double-chamber system? To some extent the reason may be found in a desire to prevent hasty or unwise legislation. For the most part, however, the two-chamber plan represents the influence of the Federal system upon the states. Some of the states had only a single chamber at the outset, but after the adoption of the bicameral system in the Constitution of the United States,

they replaced the single chamber by a double one. In early days it was the practice in many states to establish different suffrage requirements for the two chambers, but this arrangement has now been entirely abandoned. Some of the states, nevertheless, continue the theory that the senate represents counties while the assembly represents smaller districts arranged according to population. In keeping with this theory, we sometimes find it stipulated in the state constitution that no county shall have more than one or two senators, whereas each county is given representation in the lower house in accordance with its population, irrespective of any such limit. Hence a large urban county may have one senator and fifteen assemblymen, while a thinly populated rural county has one senator and one assemblyman.

Are they valid to-day? The reasons for having two chambers in state legislatures are not convincing to-day. The danger of hasty action under modern rules of legislative procedure is small. All measures are referred to committees and given hearings before they are considered by either branch of the legislature. Likewise, the governor's veto power stands in the background as a safeguard against hasty action. Nowadays there is relatively little basis for the idea that one chamber really acts as a check upon the other. Both are made up of party men and in both there is usually a majority from the same political party. Where that is the case, a measure is likely to go through both chambers at the behest of the same party leaders. On the other hand, if different political parties control the two houses, the system of checks and balances becomes so effective that deadlocks often result and all progress is blocked. The double-chamber system in state

legislatures is retained at the present time from mere force of habit and out of respect for tradition; not because it is either necessary or meritorious. It increases the cost of the lawmaking machinery; it encourages the making of laws by deals and compromises; it compels measures to follow a procedure which is too lengthy; and it provides too many opportunities for obstruction and delay. In addition it makes easy the shifting of responsibility for unpopular legislation. In some states there has been a movement to abolish the two-chamber plan, but as yet this movement has nowhere succeeded.

The legislative districts. In most of the state constitutions it is provided that members of both chambers shall be elected from districts, known respectively as senatorial districts and assembly districts. These districts are supposed to be approximately equal in population, especially in the case of the assembly districts; but very often they are not, for the reason that in most states the county is used as the basis of representation. A district is made up of a county or a portion of a county, or a group of small counties. In the New England states it is more commonly a city, or a part of a city, or a town, or a group of towns. It is not easy to make the districts fairly equal without putting two parts of a city, county, or town into different districts—and this gives offence to local sentiment. Even when districts are equal at the outset, moreover, they soon become unequal because the population of one district grows more rapidly than that of another. The state legislature is supposed to redistrict the state every ten years; but sometimes it neglects to do so and in other cases it makes the redistricting an occasion for a gerrymander, in other words a division to suit political purposes.

How state legislators are nominated. Candidates for the state legislatures are nominated in the various states either by a caucus, a convention, or a primary. The caucus, which is a gathering of the party voters in person, can only be used where the districts are small. And even in small districts this plan of nomination has largely gone out of use. Under the convention system the nominations are made by a body of delegates chosen by the party voters in various parts of the district. The convention still retains its hold in some states, particularly in the South. The primary has become the most common instrument for nominating members of the state legislature. Candidates are usually required to obtain a certain number of signatures in order to have their names placed on the primary ballot, and at this primary the voters of each political party determine which of the various seekers for nomination shall have their names placed on the election ballot as the authorized party candidates. Party nominations are everywhere the rule. In none of the states are candidates for the state legislature nominated or elected on a non-partisan ballot. They are put forward as Democrats, Republicans, or under some other party designation.

State elections. State elections are by secret ballot, but voting machines are sometimes used instead of printed sheets of paper. The election is held throughout the state upon the same day and usually it coincides with the date of a congressional or presidential election, but a few states have their own state elections at another time of the year. Each state determines who may vote for members of its own legislature, with the limitation that it must not exclude any citizen from the suffrage on grounds of race or sex. As a matter of fact, universal suffrage is now everywhere

the rule. All the states, however, have a minimum residence requirement and many of them restrict the suffrage to persons who are able to read and write. As a rule, the candidate who obtains a plurality of the votes is declared elected. One state, Illinois, provides for minority representation by an arrangement whereby each district selects three representatives and a voter is allowed three votes, all of which he may give to one candidate, or one to each, or two to one and one to another, as he pleases. This is called cumulative voting. It permits the minority party to elect one of the three representatives in each district by having its supporters concentrate all three votes upon him.

Qualifications, privileges, and immunities of state legislators. As a rule, any person who is a qualified voter in the state is eligible to be elected a member of the state legislature. Some states, however, have an age qualification, particularly for membership in the state senate. This limit is fixed at thirty years or higher. Sometimes the state laws require that a member of the legislature shall be a resident of the district from which he is chosen; but whether the law requires this or not, it is everywhere the custom. A person who lives outside the legislative district has very little chance of being chosen to represent it. No one who holds office under the national government, or in the executive or judicial departments of the state government, may be chosen a member of the state legislature. Members of the state legislatures have the usual privileges and immunities. They are exempt from arrest under civil process while the legislature is in session, as is the case with congressmen; they have freedom of speech on the floor of either chamber, and may not be questioned in any

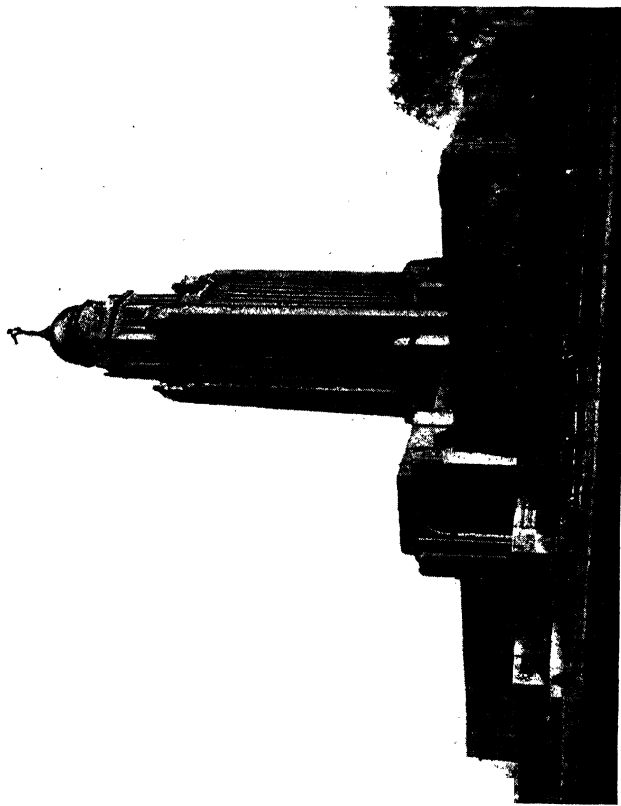


Photo from Times Wide World

THE STATE CAPITOL AT LINCOLN, NEBRASKA

other place for things which they say in the course of a debate. State legislators usually receive a salary. Sometimes it is so much per session; in other cases it so much per day while the session lasts.

Legislative sessions. In nearly all the states, the legislature holds a regular session once in two years. In about a half dozen states, however, annual sessions are still convened. These regular sessions are ordinarily continued for three months or more. In case matters arise which cannot be left until the date of the regular session, the governor has power to call the legislature into special session. Special sessions customarily last for a much shorter time. In some states the legislature is required to adjourn after having sat for a prescribed number of days. In a few others, the same end is achieved by a provision that after a certain number of days the legislators receive no more pay, no matter how long they remain in session. With most members of state legislatures this is a sufficient incentive to a prompt adjournment.

Powers of the state legislature. The powers of the state legislatures include every branch of governmental activity which has not been withdrawn from the state legislature by the terms of the national Constitution or by the constitution of the state itself. The limitations placed upon the states by the terms of the national Constitution have already been mentioned. The state legislature obviously must not enact laws upon any matter which has been placed exclusively within the jurisdiction of Congress, but many limitations on legislative power are also provided in the several state constitutions.

Limitations in the state constitutions. These limitations differ from state to state, but their general character may

be summarized as follows: State legislatures are usually forbidden to infringe any of the fundamental rights of the citizen as set forth in the state constitution. Likewise they are frequently enjoined not to authorize the use of the state's credit by borrowing beyond a certain point, or to impose property qualifications for voting, or to grant money to sectarian schools, or to give perpetual franchises to public service corporations, or to grant special charters to cities, or to change the seat of a county government without the consent of the voters thereof, or to reduce the salaries of judges during their term of office, or to make discriminations in the tax laws, and so forth. In addition to these actual prohibitions, the state constitutions often prescribe in detail the way in which many things shall be done, including some of the rules of legislative procedure. State constitutions often require, for example, that all bills shall be printed before being acted upon by the legislature, that no bill shall deal with more than a single subject, and that there must always be a roll call on certain measures. These limitations have been gradually growing in number and in scope. Every time a state constitution is revised, more restrictions are inserted. Nevertheless, the powers of state legislatures are still very broad and of the highest importance. The forty-eight state legislatures enact on an average more than twenty thousand laws per year, and these laws deal with a great variety of matters. It would be impossible to give even a classification of them here. Look through any volume of state statutes and you will get some idea of them.

Legislative procedure. State legislatures throughout the country are organized in much the same way. In most cases the senate has the lieutenant governor as its presid-

ing officer. Occasionally, however, there is no lieutenant governor; or, in some cases, even if there is such an officer, he is not the senate's presiding officer. In such instances the senate chooses its own president. Everywhere in the state house of representatives or assembly the presiding officer is the speaker, who is chosen by the house itself. As a matter of practice he is really chosen at a caucus of the majority members. The speaker of a state assembly is more powerful than the speaker in the national House of Representatives. He appoints all committees and often exercises a great influence over legislation. Each chamber of the state legislature has the right to make its own rules of procedure, subject to such limitations as may be placed upon it by the terms of the state constitution. These rules of procedure differ from state to state but in general they are much alike. They usually provide that all bills shall be introduced in a prescribed way, referred to committees, given three readings in each chamber, and then sent to the governor for his signature.

The legislative committees. In most of the state legislatures there are several committees for each chamber, but in a few of them nearly all the committees are joint committees; that is to say, they are made up of members selected from both chambers. This system of joint committees avoids much duplication of work. At any rate, legislative committees vary in size, running from as few as five to as many as fifty members or even more. The committees are also of varying importance. Some of them, such as the legislative committees on finance, or on rules, or on labor, or on industrial affairs, often have a great deal to do. Others, such as the committee on printing, or on pensions, or on Federal relations, have very little. In addition to the

regular committees, it is the custom to appoint special legislative committees whenever the occasion arises. These are chosen to consider some particular subject and are dissolved when their consideration of the matter is finished.

Their work. Legislative committees have no final power. They merely recommend to the whole chamber whatever action they believe ought to be taken. In a great many cases they make no recommendation at all. That is to say, various measures which have been referred to them are merely placed on file and never reported at all. This process is known as "killing bills in committee." Each chamber of the state legislatures also uses, in some cases, the procedure known as sitting in *committee of the whole*. This method of doing business has already been described in connection with the work of the national House of Representatives. Every legislative committee has its chairman and sometimes its secretary as well. Both the chairman and the secretary are usually members of the committee.

How state laws are made. Let us outline briefly the procedure through which a measure passes on its way to become a state law:

(a) *Drafting a bill.* First of all, a bill is drafted. This may be done by any one. As a rule it is done by some lawyer who has been engaged by an individual citizen or by an organization for this purpose. Some of the states have legislative reference bureaus to provide assistance in this respect. It is the function of a legislative reference bureau to gather information which can be used in the drafting of bills. Or the legislative reference bureau will prepare the actual draft of a bill when asked to do so by any member of the state legislature. Bill drafting is a

rather technical matter, and requires both skill and experience. When measures which have not been properly framed are enacted into law they frequently give rise to disputes and lawsuits.

(b) *Introducing a bill.* The bill having been drafted, it can be introduced into either house by one of its members. But by introducing a bill the senator or assemblyman does not thereby indicate his approval of it. He may be merely doing a favor for somebody in his district. Bills are introduced by filing them with the clerk of the senate or assembly. In some legislatures there is a provision that all bills must be introduced within a certain number of days after the legislature meets.

(c) *Reference to a committee.* On introduction, each bill is announced by its title, given a serial number, and referred to the appropriate committee. For example, it goes to the committee on public utilities if the measure concerns a street railway, or to the committee on municipal affairs if the bill proposes an amendment to a city charter. Then the committee meets, usually in the morning hours when the legislature is not sitting, and at these meetings the bills are considered in regular order. Those who favor or oppose each measure may appear and be heard. Committee hearings are open to the public. After both sides have been heard, the committee goes into executive session and reaches a decision as to what it will recommend. It may recommend that the measure ought to pass exactly as it stands, or that it ought to pass with certain amendments, or that it ought not to pass, or that it ought to be referred to the next session of the legislature; or finally, the committee may make no recommendation whatever. In a few states, however, the rules of the legis-

lature require that every committee shall make some definite report on each bill referred to it. Most bills which come into state legislatures are slated to meet an adverse committee report or no report at all. Not more than ten per cent of the measures which are introduced at each session ever get through to final enactment.

(d) *The debate.* When a committee has finished its consideration of a bill and desires to make some recommendation concerning it, the measure is returned to the chamber in which it originated, where it is put on the calendar and in due course comes up for general discussion on the floor. Before it reaches this stage the bill is always printed for the benefit of the members. A copy is placed on each legislator's desk before the debate begins. The rules usually provide that every bill shall be given three readings, but this does not mean that it is actually read three times from beginning to end. The first and third readings are usually a mere matter of form. The clerk of the chamber simply reads the title of the measure. At the second reading, the whole bill may be read aloud by the clerk, but even this is not customary. The placing of a printed copy on the desk of every member is assumed to be a second reading.

(e) *Concurrence or conference.* Then the debate on the merits and defects of the measure takes place and may extend over several days. If the bill passes one chamber, it goes to the other branch of the legislature, where it is subjected to the same procedure all over again. It is referred to a committee, comes back and is debated, and may be defeated in the second chamber. But if finally passed, it goes to the governor for his signature. If either house makes the slightest amendment in a bill which has

been passed by the other, the measure must go back to the original chamber for its concurrence in such an amendment. And when a deadlock arises between the two houses, a committee of conference is usually appointed to adjust matters.

Lawmaking by unanimous consent. You will notice, therefore, that the passing of a state law is by no means a simple matter. It involves a long and rather complicated procedure with chances of failure at a great many points. Ordinarily the process of enacting a law requires several weeks; but in cases of emergency the machinery can be speeded up. Under stress of urgency, the rules can be suspended. Then under suspension of the rules a measure can be introduced in the morning, referred at once to a committee and reported by noon, passed by the first chamber before it adjourns for lunch, introduced in the other chamber when it reconvenes in the afternoon, sent to a committee immediately, reported there by three o'clock, voted on the floor during the next hour, and reach the governor's desk before supper time. To accomplish this, however, the measure must be one of extreme urgency and all parties must be agreed upon it. A single member in either house, by raising objections, can put off the consideration of any measure for a day or even for several days.

The invisible government in state legislatures. Although bills are introduced by members of the legislature, they really originate for the most part in organizations or associations or corporations outside the legislature. Taxpayers' leagues, chambers of commerce, labor unions, street railway companies, and various other bodies often procure the introduction of bills and endeavor to promote their enactment. This active promotion of legislative measures

is known as lobbying. By lobbying we mean the sending of agents to the state capitol for the purpose of conferring with individual members of the legislature, usually in the lobby, and urging them to vote for or against a measure. Some states require that all lobbyists shall register their names with the clerk of the legislature and shall make a public statement as to the amount of money they have received for their work, as well as the source from which the money has been derived. At every state capitol there are dozens of lobbyists throughout the legislative session. They form part of what is known as the invisible government, and are sometimes referred to as the *third chamber* of the legislature.

Have we too many laws? Everybody who is not a lawyer will agree that we have too many laws in the United States. Certainly we have a great many of them; how many nobody can say because no one has ever undertaken to count them all. The total must run far into the hundreds of thousands. Adding together the national laws, the state statutes, and the municipal ordinances, it runs into the millions. Every good citizen is presumed to know these laws, all of them, and ignorance is no excuse for his violating them. Yet in spite of that theory, no citizen is familiar with one tenth of the laws which he is supposed to obey and hence he sometimes violates the laws or the ordinances unintentionally.

Reasons for the multiplicity of laws. There are two reasons why we have so many laws in America. One is that the people have great faith in the ability of lawmakers to solve all problems by the mere enactment of laws. The average citizen, when he finds anything wrong, is apt to think that a law would set it right. How often we hear

people say: "There ought to be a law against that sort of thing." Or: "the law ought to provide" so and so. As a matter of fact, very few real problems are ever solved by the mere passage of a law. We speak of our government as a government of laws, not of men, but forget that laws are lifeless things with no motion of their own. Like clocks they go from the motion that men give them. Every government, therefore, must be in large measure a government of men, no matter what the constitution of the state may provide. For the laws must be interpreted, applied, and enforced by human hands, and it is this interpretation and enforcement that really count. A law which is not enforced is of no value.

The second reason for the great quantity of laws is to be found in the increasing complications of modern life. Great masses of people are now living together under conditions which require the strict regulation of every man's conduct in order that his neighbor's rights shall be duly preserved. In the old days when most of the people lived on farms, each one somewhat removed from his neighbor, this regulation of individual conduct was not essential. But to-day, with the majority of our people living in towns and cities, a far larger measure of social control has become necessary. This social control is exercised, for the most part, by increasing the number of ordinances and other regulations.

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QUESTIONS ON THE TEXT

1. Why are the state legislatures important? What is meant by "the state governments supply most of the motive power in American government"? Give illustrations.

2. How are state legislatures organized? What are the two houses called in the various states? Why do we have the bicameral system in state legislatures? Should we have single-chambered state legislatures? What would be the advantage?

3. What are legislative districts? How are they made?

4. How are the members of state legislatures nominated? How are they elected? What are their qualifications, privileges, and immunities?

5. How long is a legislative session? When and by whom is a special session called? How are sessions terminated?

6. What are the powers of state legislatures? What limitations are placed upon them? Where are these limitations prescribed?

7. How does a bill become a state law? Give the various steps.

8. How do most bills perish? Is it a good or bad thing that they meet this fate?

9. How can laws be hastened by unanimous consent? Why are they sometimes passed in that way? Is this a dangerous practice?

10. What is *the invisible government*? Is lobbying in itself an evil? Why is lobbying frowned upon?

11. Is law enforcement more important than lawmaking? Why do we have so many laws?

12. What is the salary of your state assemblyman and senator? May members of state legislatures raise their own salaries? Why or why not? How many members has each house in your state? How are they chosen? What are their qualifications?

13. Compare and contrast the powers of the state legislatures with those of the national government.

QUESTIONS FOR DISCUSSION

1. In Canada the provincial legislatures have only one chamber. Does their experience show that a single house is enough? Are there any reasons why this plan should be workable in Canada but not in the United States?

2. In California the state legislature meets for two sixty-day periods with a thirty-day adjournment between. This gives the legislators an opportunity to return to their districts and find out what the voters think about various bills that have been introduced. What are the merits and defects of this system?

3. In May, 1929, the legislature of Massachusetts, by a two-thirds vote in both houses, passed over the governor's veto a bill increasing their own salaries and making the increases date back to January 1. Do you believe that legislators should be forbidden by the state constitution to do this?

4. Should the governor be allowed to veto individual provisions in a bill or only to veto the bill as a whole? Why?

5. What powers do the state legislatures have in the matter of amendments to (a) the state constitutions, (b) the Federal Constitution?

TOPICS FOR ESSAYS

1. The Size of State Legislatures. 2. How Legislative Districts Are Made. 3. Can the Methods of Nominating State Legislators Be Improved? 4. Legislative Sessions: How Often and How Long? 5. The Powers of State Legislatures. 6. Restrictions on State Legislatures. 7. State Legislative Procedure. 8. How a Bill Becomes a State Law. 9. Lawmaking by Unanimous Consent. 10. The Invisible Government in the States. 11. Lobbying: Its Merits and Dangers. 12. Why We Have So Many Laws.

SUBJECTS FOR DEBATE**RESOLVED:**

1. That state legislatures should have a single chamber.
2. That lobbying is a useful practice if properly regulated.
3. That lawlessness is due to too many laws.
4. That a representative should vote as his judgment and conscience tell him, rather than as his district desires.

CHAPTER XVIII

DIRECT LEGISLATION AND THE RECALL

1. The constitution of Massachusetts makes provision for the enactment of laws by means of the initiative and referendum, but stipulates that "no law that relates to religion, religious practices, or religious institutions" shall be enacted by that method. This exclusion is due to a fear that a majority of the voters might be actuated by religious intolerance if certain questions were put on the ballot. Do you think this a wise restriction on the use of the initiative and referendum? Why? Would you think it well to place a similar restriction on laws relating to the relations of labor and capital where popular passions are also likely to be aroused?
2. Questions relating to the following matters have been placed on the ballot by initiative petitions: bond issues, pensions for policemen, the extension of civil service rules, granting of street railway franchises, levying an income tax, speed limit on state highways, pay of school teachers, abolition of capital punishment, compulsory vaccination, licensing of chiropractors, fixing salaries of state officers, appropriating money for a state university. Which of these questions seem proper ones for decision by the voters at the polls?
3. Should the recall be applied to all elective officers, including judges? Would it be practicable to have appointive officers (like city managers) subject to the recall? Would you have a provision that no officer shall be recalled until he has served at least one year? State your reasons in each case.

The initiative and referendum: what they are. The machinery of direct legislation consists of two political devices which usually go together and are known as the initiative and referendum.

By the *initiative* is meant the right of a stated percentage of voters in any state or other political division to propose a law and to require that if this proposal is not forthwith adopted by the regular lawmaking authorities it shall be submitted to the people for their decision at the polls. The initiative usually covers constitutional amendments as well as laws. To put it in less technical language, if anyone believes that a new law or ordinance should be passed, he draws up the law or ordinance in such forms as he desires; then he gets a certain number of voters to sign a petition asking for its passage. If the legislature enacts it, well and good; if it does not enact it, the question of whether the law shall be adopted goes on the ballot for the voters to decide. In the case of proposed amendments to the constitution of a state or to the charter of a city the procedure is much the same. The proposal is drawn in proper form; a petition is circulated and signed; then the question of adopting the proposed amendment is submitted to the voters for their approval.

The *referendum*, on the other hand, is an arrangement whereby a measure already passed by the legislature or city council may, under certain conditions, be withheld from going into force. To illustrate: The state constitution sometimes provides that no measure (except an emergency measure) shall go into effect for so many days after its enactment by the legislature. If, within that time, a petition is filed by a designated number of voters asking that a referendum be held on the law, it is restrained from going into force until a popular vote is taken on it at the next election. An emergency measure is one urgently demanded by considerations of public safety, health, or convenience.

The referendum, as a rule, cannot be invoked in the case of emergency measures.

Progress of the initiative and referendum in America.

It is only about a quarter of a century since the initiative and referendum, in this form, made their appearance in America. The first state to establish them was South Dakota in 1898. But other states soon took up the idea and to-day nearly half the entire number have made provision for direct legislation in one form or another. From the states the movement spread to the cities, a large number of which now have provisions for the initiative and referendum inserted in their charters. The extension of the system to the national government by means of an amendment to the Federal Constitution has been urged by some organizations, including the American Federation of Labor, and it may be that such an extension will some day be made; but for the present the movement for the wider use of direct legislation does not seem to be gaining strength.

Reasons for the spread of initiative and referendum.

How is the rapid spread of this movement for direct legislation in the United States to be accounted for? At least three reasons may be given. One is the decline of popular confidence in lawmaking by legislators. The work of the legislatures in many of the states and of the city councils in most of the cities has been unsatisfactory to the people on a good many occasions. It has given vogue to the idea that the people themselves could not do much worse and might do a great deal better. A second reason may be found in the habit of evading responsibility which many legislatures and city councils have acquired in recent years. When difficult questions come before legislatures, the mem-

bers often seek an easy solution, so far as they themselves are concerned, by "putting the matter directly up to the people." In other words, they avoid making a decision by shifting the question to the ballot at the next election. In many states this practice of passing measures with a referendum clause has become common. Finally, the initiative and referendum are part of the movement for direct democracy. The people, owing to the spread of education, have become more confident of their own political ability.

The initiative and referendum in practice. In actual practice, the initiative and referendum do not provide a simple and easy means of making laws. Their use is hedged about by all sorts of formalities and conditions. In no two states are those conditions exactly alike, but in a general way the practical workings of direct legislation are somewhat as follows:

(1) *The petition.* As the first step, those who desire a new law make a draft of it in writing. Then they write out a brief petition to accompany it and obtain as many signatures as they can. The usual requirement is that a certain percentage of the qualified voters must sign the petition before it will be accepted by the authorities. These signatures are secured by holding meetings, or by a house-to-house canvass, or by placing copies of the petition in banks, stores, and other public places where voters can sign them. When enough signatures have been obtained, the petition, accompanied by the draft of the proposed law, is presented to the proper official at the state capitol or city hall and this official checks the names with a copy of the voters' list. If he finds that all the requirements have been fulfilled, he endorses on the petition a statement to this effect and makes provision for placing the

QUESTIONS AND PROPOSITIONS

TAXATION OF HIGHWAY TRANSPORTATION Article XIII of Constitution. Initiative measure adding Section 15 to Article XIII of Constitution. Requires companies owning and operating, as common carriers, upon public highways, delivery buses, stages or motor vehicles, to pay annual state tax upon their operative property of four percent of their gross receipts from operations, in lieu of other taxes and licenses thereon, except ad valorem and deed deficiencies or to pay bonded indebtedness, maturing November 4, 1924, of political subdivisions; Legislature by two-thirds vote to change such statute.	YES
PAID AND EXPENSE OF LEGISLATURE Constitutional Amendment 23. Amends Sections 23 and 24 of Article IV of Constitution. Declares members of Legislature shall receive one hundred dollars per month payable monthly in even numbered years, and no regular session to be provided by law, and no regular session to exceed five cents per mile; Legislature to provide for selection of all officers and employees when advisable, under civil service, limiting total expense thereof to three hundred dollars for either during regular session, and two hundred dollars during special session.	NO
PAID AND EXPENSE OF LEGISLATURE Constitutional Amendment 23. Amends Sections 23 and 24 of Article IV of Constitution. Declares members of Legislature shall receive one hundred dollars per month payable monthly in even numbered years, and no regular session to be provided by law, and no regular session to exceed five cents per mile; Legislature to provide for selection of all officers and employees when advisable, under civil service, limiting total expense thereof to three hundred dollars for either during regular session, and two hundred dollars during special session.	YES
PAID AND EXPENSE OF LEGISLATURE Constitutional Amendment 23. Amends Sections 23 and 24 of Article IV of Constitution. Declares members of Legislature shall receive one hundred dollars per month payable monthly in even numbered years, and no regular session to be provided by law, and no regular session to exceed five cents per mile; Legislature to provide for selection of all officers and employees when advisable, under civil service, limiting total expense thereof to three hundred dollars for either during regular session, and two hundred dollars during special session.	NO

PORTION OF A REFERENDUM BALLOT

Sometimes as many as twenty questions are submitted to the people in this way

SUBMITTED TO VOTE OF ELECTORS

TAX EXEMPTION Assembly Constitutional Amendment 52. Amends Section 1 of Article XIII of Constitution by inserting a proviso therein declaring exempt from taxation property not exceeding in value in any one county \$50,000, used exclusively as air-ports or aviation fields under the control of United States Government and while so used and under such control.	YES
15	NO
WATER AND POWER Initiative measure adding Article XIVa to Constitution. Creates board, appointed by Governor and subject to recall, authorized to develop and distribute water and electric energy, acquire by any legal means any property therefor and do anything convenient thereto, including using and reserving state lands and waters; gives state and political subdivisions certain preferential rights as against privately owned public utilities selling water or electric energy to public; authorizes issuance of bonds not exceeding \$500,000,000, to further such purposes, requiring board to fix rates to meet expenses and retire bonds in fifty years.	YES
16	NO
WARRANT DOMAIN Assembly Constitutional Amendment 53. Amends Section 23a of Article XII of Constitution, which now empowers railroad commission to exercise such power as Legislature confers upon it to fix compensation to be paid for taking property of public	YES
17	NO

From W. B. Munro's "Government of American Cities"

question on the ballot at the next election, or, in some cases, at a special election held for the purpose.

(2) *The vote.* Meanwhile the legislature or city council may enact the measure, in which case the question need not be placed on the ballot. To inform the voters concerning the various initiative measures which are to be voted on, some states have provided that a pamphlet shall be prepared and mailed to every voter previous to the election. These pamphlets contain the texts of the proposed laws and also, in some cases, a summary of the arguments for and against each proposal. At the election the voters mark their ballots with a cross opposite the words *Yes* and *No* and the proposed law is accepted or rejected in accordance with the will of the majority.

In the case of the referendum, a petition is also drawn up and a designated number of signatures obtained. When enough signatures have been secured, usually the same number as is required for the initiative, the petition is presented, checked up, and certified in the same way. The law in question, although duly enacted by the legislature, is then withheld from going into effect until the voters ratify it at an election.

Extent of their use. In some states the initiative and referendum have been used quite freely; in others hardly at all. In Oregon during the years 1906-1929, more than one hundred and fifty measures were submitted to the voters at the various elections; in Massachusetts fewer than a dozen measures have been initiated by petition in ten years. Much greater use has been made of direct legislation in the Far West than in the East. In some western states it is not uncommon to find ten, fifteen, or twenty questions on the ballot; in a few cases the number

has gone as high as thirty. The questions relate to a great variety of matters, some important and some trivial. Some are simple, and easy for the average voter to understand, while others are so technical and complicated that even experts are sometimes at a loss to know what they mean.

Merits of direct legislation. The reputed merits of the initiative and referendum may be summed up under four heads:

1. *It makes government more democratic.* In legislatures the influence of some class, section, or partisan element among the people has often determined the making of the laws. Bills have frequently been passed or defeated because a powerful lobby, supported by a small minority of the people, could mobilize enough votes in a state legislature. By the use of direct legislation the whole people can make their will effective.

2. *It has an educative value.* People who are called out to vote upon measures will learn something about them before going to the polls. When the legislators alone make the laws, the individual voter takes no interest in the lawmaking. But when the questions go on the ballot, there is a general public discussion of the arguments for and against. Pamphlets giving the arguments for and against each measure are sent to voters through the mails; newspapers discuss the questions; and public meetings are held by those who favor or oppose. In this way the whole body of the voters becomes informed on public problems.

3. *It gives the ordinary citizen a chance to make his influence felt.* The legislature, in doing its work, does not hear much from the plain man who attends to his own business. It hears chiefly from the vested interests, the corporations and capitalists on the one hand, or from labor organiza-

tions or the farmers, on the other. It is also subjected to pressure by politicians and party leaders. But a considerable part of the population is made up of men and women who are neither capitalists, union workers, nor politicians. Direct legislation gives this silent section of the electorate a chance.

4. *It keeps legislative bodies on their good behavior.* The initiative and referendum are not intended to supplant lawmaking by legislatures. Most of the laws will continue to be made by the old process. Direct legislation is merely a remedy in the hands of the people for use when the regular lawmaking bodies fail to carry out the popular will. Knowing that the voters have this weapon ready for use, the legislators are more careful about what they do. They know that an appeal may be taken to the voters and their own decisions overturned. This is an incentive to better work on their part. Hence the initiative and referendum will really strengthen rather than destroy our system of representative government.

Defects of direct legislation. But there are arguments on the other side as well, and these can also be arranged under four headings:

1. *Direct legislation weakens the civil rights of the individual.* These rights are embodied in the state constitutions for the purpose of preserving them. The constitution protects the citizen against an unjust denial of his rights through the enactment of arbitrary laws. The constitution restrains the laws and the lawmakers. But if a majority of the voters can change these constitutions at any time, there is no longer any distinction between constitutions and laws. This means that there is no special protection for the rights of property, for free speech, or for freedom of

worship. A majority of the people can oppress a minority at any time.

2. *Direct legislation is usually the work of a majority in name only.* Not more than eighty per cent of the people regularly cast their ballots on election day; the proportion is often much smaller. Of those who go to the polls, many do not vote on all the questions. The result is that measures are frequently ratified by the votes of only thirty or forty per cent of the whole electorate; in other words, by a distinct minority. The alleged "rule of the majority" thus becomes a fiction, not a fact.

3. *Direct legislation results in appeals to public prejudice and leads to demagogism.* When measures are submitted to the people, the discussion is not confined to the merits of the proposed laws. The supporters and opponents alike appeal to the prejudice and self-interest of the voters. The demagogue uses his opportunity to the fullest extent, thus inflaming bitterness between different classes among the people. There is no opportunity for calm deliberation or compromise as in the legislative halls. The voters can only say *Yes* or *No*. They must take the measure as it stands or reject it entirely. As a rule, moreover, the man who is ready to say *Yes* or *No* to any public question can be set down as one who has given very little thought to the subject.

4. *Direct legislation tends to break down the whole system of representative government.* It divides the responsibility for lawmaking, encourages the election of less efficient representatives, and places upon the people a task which they cannot intelligently perform. The voters will not and cannot fully inform themselves about the merits and defects of ten, twenty, or thirty different questions on the

ballot. It is absurd, the opponents of direct legislation declare, to submit a long list of questions to the voters when thousands of these voters are not even able to read or write.

The relative weight of these arguments. The foregoing paragraphs give the arguments both for and against direct legislation as they are commonly put forth by the two sides. The supporters of direct legislation are inclined to magnify its merits; the opponents are equally prone to overstate its defects. Due allowance should be made for this in weighing their respective arguments. Direct legislation has not put an end to the power of political bosses, or destroyed the party system, or made all laws righteous. On the other hand, it has not led to lawmaking by demagogues or impaired the fundamental rights of the citizen. Laws passed by means of the initiative and referendum have been, on the whole, no better and no worse than laws passed by legislatures. The strong probability is, if one may venture a prediction, that less use of direct legislation will be made as time goes on. This does not mean, however, that the system will be valueless. It still remains a highly important weapon of last resort which the people can use if they need it. At any rate, no one need hesitate to make up his own mind as to the relative merits and defects of the initiative and referendum, for he will find himself in pretty good company whichever side he takes.

The recall. The recall is the right of a designated number of voters to demand the immediate removal of any elective officeholder and to have their demand submitted to the voters for decision. A petition for removal is drawn up and circulated for signatures; when enough sig-

natures have been obtained, it is presented to the proper authorities who thereupon hold an election to decide the matter. The petition usually states the reasons for demanding the officeholder's removal before the expiration of his term. If a majority of those who vote on the question are in favor of removal, the officeholder vacates his post at once; if they reject the demand for a recall, he continues in office. Provision for the recall was first established in Los Angeles (1903), and during the past twenty years it has been adopted by many cities in different parts of the country. Ten states have also provided for the recall of elective state officials. Several city officials have been removed at recall elections, but very few state officers have yet been ousted from office by this procedure.

The purpose of the recall is to ensure the complete and continual responsibility of public officials to the people who have elected them. It enables the establishment of longer terms of office without incurring the danger of autocracy on the part of officeholders. On the other hand, the recall is a weapon which may easily be perverted to wrongful use. If attempts were made to oust an officeholder whenever his work gave offence to any influential element among the voters, the recall procedure would soon become an intolerable nuisance, in that it would be continually bringing the people to the polls. It would likewise deter independent and capable men from accepting office at all. But as a matter of fact, the recall has not been widely used. For the most part the people have held it in reserve for emergencies. It is like a fire escape on the outside of a building: not to be used at all under ordinary circumstances, but exceedingly valuable when an emergency comes.

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QUESTIONS ON THE TEXT

1. What is meant by the initiative? The referendum? Where and when were they first used in the United States?
2. Account for their spread. Are they used in your state? To what extent?
3. What is the procedure in getting a law enacted by means of an initiative petition? How does the referendum operate?
4. What are the merits and defects of direct legislation by the people?
5. What is the recall and how is it used?
6. Would the use of the initiative, referendum, and recall be advisable in national government? Justify your answer.

QUESTIONS FOR DISCUSSION

1. It is sometimes said that "the lobby forms the third house of Congress," but that with the initiative and referendum in use on a nation-wide scale the people would constitute the third house. Is that true? Why?
2. "Direct legislation gives the demagogue his opportunity." "Direct legislation educates the people and makes democracy effective." Which quotation comes nearer the truth?
3. Will the use of the initiative and referendum weaken or strengthen representative government? Why?

TOPICS FOR ESSAYS

1. The Initiative and Referendum in Switzerland.
2. Provisions for Direct Legislation in the New Constitutions of European Countries.
3. The Initiative and Referendum as a Means of Amending State Constitutions.
4. Should the Bill of Rights Be Alterable by Direct Legislation?
5. Do We Need a Third House for Lawmaking?
6. The Recall as a Measure of Popular Control.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the people as a whole are not competent to decide the advisability of most laws.
2. That the recall should be made usable in the case of all elective offices.
3. That short terms of office and frequent elections are better safeguards than direct legislation and the recall.

CHAPTER XIX

THE STATE EXECUTIVE

1. It has been suggested that the double-chamber system be abolished in state government and that the governor should be chosen by the single-chamber state legislature immediately after its members have been elected at the polls. Then the governor should choose a cabinet, each member of which would be the head of a state department. Members of this cabinet would have the right to sit in the legislative chamber and to speak there on any subject, but not to vote. What would be the advantages and drawbacks of such a system? Would it be an improvement on what we have? Why?
2. "The governor of an American state is the President of the United States in miniature." "The governor is merely the mayor of a city, writ large." Both these statements are in part true, in part false. Sift the truth from the falsity in both statements.
3. In some states the annual budget is prepared by the governor and submitted to the legislature by him. If the legislature changes any item in the budget, the governor can then veto its action and a two-thirds vote in both houses is necessary to override this veto. In other states the budget is framed by a committee of the legislature and the governor has no part in it until after the legislature has finally enacted the measure. Then he may accept or reject the budget as a whole, but may not veto any item in it. Which of these two budget systems do you prefer and for what reasons?
4. In New Jersey, the people elect their governor and he appoints all the other executive officers in the state administration. Other states make a practice of having various high state officers (*e.g.* treasurer, auditor, attorney-general, secretary of state, superintendent of education, etc.) elected by the people. This makes them virtually independent of the governor who, nevertheless, is

supposed to be the head of the entire state administration. Do you believe that the New Jersey plan might wisely be extended to all the states? What dangers are involved in it? Draw comparisons with national and local government in this respect.

The governor. Every state has a governor as its chief executive officer. In every state he is elected by the people. His office is established by the state constitution and is endowed with independent powers. The governor is the first citizen of his state and is the titular head of its administration. He is sworn to uphold the constitution of the state and to execute the laws. He possesses a wide range of governmental authority which has been steadily growing during the past hundred years.

Evolution of the office. The office of governor is the oldest executive post in America. More than three hundred years ago, before the first colonial legislature came into existence, the position of governor made its appearance in Virginia and it has continued without interruption ever since. Each of the thirteen colonies had a governor before the Revolution, and in two of them the office was indirectly elective. In general, however, the colonial governors were appointed. As a rule they were unpopular, and no wonder, for they had to serve two masters—the home government which often wanted one thing, and the people of the colonies who wanted something different. The colonial assemblies, on the other hand, were popular because they were looked upon as guardians of popular liberty. Consequently, when the first state constitutions were framed after the Revolution, the powers of the governors were reduced almost to insignificance while the authority of the legislatures was enlarged. Little by little, however, the popular hostility to the office of governor dis-

appeared; while the legislatures, for a variety of reasons, declined in the confidence of the people. During the last ~~forty~~ **fifty** years, accordingly, the tendency has been to increase the authority of the state governor and to lodge more power in his hands. Governors have become stronger and legislatures weaker. This process is likely to keep on.

Term, method of election, and removals. The term of the governor is either two or four years in all the states but one. The exception is New Jersey, which retains a three-year term. During the early years of the nineteenth century, the governors in some of the states were chosen by the state legislatures, but this method has now been everywhere abandoned for the plan of popular election. Candidates for the office of governor are nominated in some of the states by direct primaries and in others by party conventions made up of delegates from counties or assembly districts. The election is in all cases by secret ballot and a plurality of votes is sufficient to determine the choice. A governor may be removed from office by conviction on impeachment before his term expires. Such impeachments are usually tried by the state senate on charges made by the assembly or lower chamber.

The recall of governors. As a matter of fact, very few governors have been removed in this way—only four or five during the last hundred and fifty years. In about a dozen states the governor may also be removed from office by means of a recall election. This involves a petition, signed by a sufficient number of voters, requesting the governor's removal. If the petition is found to be sufficiently signed, the question of removal goes on the ballot at the next election, and if the popular vote is adverse to the governor, he leaves office at once. Thus far only one

governor has been removed from office in this way. In case a governor is removed by impeachment, or dies in office, or resigns, he is succeeded in most states by an officer known as the lieutenant governor. When he is removed by a recall-election, the lieutenant governor does not succeed him; instead, the office is filled by the candidate who has defeated the incumbent at the recall election. Lieutenant governors are nominated and elected in the same way as governors. In some states it is the custom to make the lieutenant governor's post a regular step on the way to the governorship; but this is by no means the universal rule. The lieutenant governor is frequently the presiding officer in the state senate.

Powers of the governor. The powers of the governor are varied and extensive. In some ways they correspond to the powers exercised by the President of the United States, but in other respects they differ considerably. It is sometimes said that they correspond more nearly to the powers exercised by the mayor of a large city; but here again there are some important differences. The exact scope of the governor's powers may be explained by classifying them under the following heads: (a) legislative, (b) appointive, (c) administrative, (d) financial, (e) military, (f) the power to pardon, and (g) miscellaneous.

A. LEGISLATIVE POWERS

The governor's messages. In theory the governor ought to have no legislative functions. It is his duty to execute rather than to make the laws of the state. This fundamental principle of American government, known as the doctrine of checks and balances, is assumed to be operative in the states as well as in the national government.

But the practice and the theory of government do not always correspond. As a matter of fact the governor often initiates legislation, promotes it, and pushes it through both chambers of the state legislature by the weight of his official influence. The time for the meeting of the state legislature in regular session is usually fixed by the state constitution, but at other times the governor may call either or both houses into special session. Such special sessions are not uncommon. At every session, moreover, whether regular or special, the governor makes a long address to the legislature with various suggestions as to laws which ought to be enacted, amended, or repealed. In addition he may send to the legislature special messages at any time and on any subject, and in some of the states these messages are transmitted very frequently, in fact every few days. The state legislature, of course, is under no obligation to do what the governor advises, but his recommendations always carry some weight and often a great deal. A strong governor, with a majority from his own party in both chambers of the legislature, is able to exert a very considerable influence upon the making of the laws, no matter what the theory of state government may be.

The governor's veto. The governor's influence on legislative matters is not only positive but negative. He not only promotes but can prevent the making of laws. This he is able to do by means of his veto power; in other words, by the right to withhold consent in the case of bills or resolutions which have been passed by the legislature. This veto power exists in every state except North Carolina. Both in principle and in practice the governor's veto power and the veto power of the President are much alike. With

a few exceptions every measure which passes both houses of the state legislature must be presented to the governor for his signature before it can become a law. Like the President, the governor has three options: He may sign the measure within the prescribed period, or he may send it back without his signature, or he may do neither of these things. In the first case it becomes a law. In the second case it does not become a law unless both houses of the legislature pass the measure over his veto by such majority vote as the state constitution prescribes. This prescribed majority is usually two thirds, but in a few states a three-fifths vote is required. If the governor neither signs nor returns the measure within the designated time, which is commonly from three to ten days, it becomes a law without the governor's signature, provided the legislature does not in the meantime bring its session to a close.

The pocket veto. If, however, the legislature ends its session before the expiry of the time limit, what happens? In twenty-one of the states the measure does not become a law. That is, it receives *the pocket veto*, as in the case of national legislation under the same circumstances. In five states the governor has power to veto a measure after the legislature adjourns and to send it back at the beginning of the next session; but if he does not veto and send it back in this way, the bill becomes a law. In the remaining twenty-two states the close of a legislative session within the time limit which is set for the governor automatically kills all measures which he does not subsequently sign.

Limitations on the veto power. In many of the states, the governor cannot veto individual clauses or sections of a bill; he must sign or reject the measure as a whole. In the case of appropriation bills, this is a serious handicap

upon him. It means that he is often faced with the option of letting an objectionable item of expenditure go through, or of rejecting the entire list, thus leaving the government short of funds. In some states, however, the governor is given the right to veto individual items. This power has been found to serve the interests of economy in state expenditures.

B. APPOINTMENTS

Patronage and confirmation. Originally most of the higher state officials were chosen by the legislature or directly elected by the people. To-day some of them (such as the secretary of state, attorney-general, etc.) continue to be elected by popular vote, but many other positions have been brought within the governor's appointing power. In such cases he has the patronage, as it is sometimes called—in other words, he may use such appointments to reward his own friends or to strengthen his party. When new administrative offices are created the usual practice nowadays is to provide that the appointments to these positions shall be made by the governor. Many state constitutions, moreover, contain a general provision that the governor shall have power to appoint all officers whose election or appointment is not otherwise provided for.

Procedure in confirmations. But as a rule the appointing power of the governor is subject to the restriction that he must obtain the consent of some other authority; usually that of the state senate, but in a few cases this power of confirmation rests with a smaller body known as the governor's council. When, therefore, the governor desires to name some one to a vacant position, he transmits the nomination to the state senate or to his council, as the case

may be. In the state senate it is referred to the appropriate committee and on a roll-call vote the appointment is either confirmed or rejected. If it is rejected the governor may nominate some one else, and repeat the process until a person satisfactory to the senate is named.

Why confirmation is required. This requirement of confirmation was established to prevent the governor from abusing his power of appointment by putting unqualified men into office as a reward for helping to get him elected. In other words its purpose is to restrain the wrong sort of governor in case the people make a mistake at the polls and elect a governor of the wrong sort. But on the other hand it is an equal restraint on the right sort of governor when he tries to make good appointments, for state senators sometimes try to persuade the governor to appoint their own friends and reject his other nominees if he does not do so. Consequently it has been suggested that the requirement of confirmation should be abolished, as it has been in the case of mayor's appointments in some of the larger cities. No state has as yet taken this step.

Appointments under civil service rules. As respects the appointment of minor officials in state government, the governor's power is also limited by the civil service laws in some of the states. These civil service laws provide that subordinate positions shall be filled by competitive tests. A state board, known as the civil service commission, holds competitive examinations from time to time; and when a position becomes vacant, this board transmits to the governor, or to some other appointing authority, a list of eligible names. For example, if some state department desires the services of a stenographer, or accountant, or chemist, or boiler inspector, an announcement is made

of the date on which a competition will be held. Applications are received; examination questions are prepared; the papers are examined (sometimes there is an oral examination also); and the results are figured out. The names of those who pass the tests are arranged in order of rank and the usual rule is that one of the three highest must be given the position. This discretion among the highest three is allowed so that personal qualities may be taken into consideration.

Advantages and defects of the merit system. This plan of appointment is commonly known as the merit system. It has the advantage of being fair to all, giving everyone an equal chance and preventing the appointment of incompetent persons on grounds of personal or political favoritism. It has helped to eliminate the spoils system. On the other hand it is often argued that no system of tests or examinations can be depended upon to pick the best candidates. Even school examinations do not always prove who is the best scholar. There are many competent persons who never do themselves justice at an examination; yet no one has ever discovered a better method of picking out the best from the poorest. It is true, also, that no formal competitive test can determine such qualities as honesty, industry, tact, and loyalty—all of which are valuable in public office. To that extent the merit system has its defects. One sometimes hears it said that by making appointments under civil service rules, the state does not get the best employees but is protected against getting the worst. Whatever its shortcomings, at any rate, the merit system is a great improvement over the spoils system; it is fairer, more democratic, and has proved itself able to produce better results.

Promotions and pensions in the public service. No method of appointment will secure the best results, however, unless it is accompanied by a fair system of promotions. This has not yet been arranged for on any large scale. Appointments are to a large extent based upon merit, but promotions are still determined in many cases by personal or party favoritism. Rarely is there any examination or other test to decide who will be promoted when a vacancy occurs higher up. It is desirable, therefore, that the merit system of appointment should be supplemented by a merit system of promotions. Many capable young men and women will not enter the public service to-day because there is no certain chance of promotion on the basis of ability and industry. A merit plan of promotion would help to attract better candidates. The public treasury, moreover, ought to provide pensions for those who retire by reason of old age after many years of faithful service. Some large private institutions are now doing this. The nation, state, and city ought to adopt the same practice, not only because it is the humane way of treating aged employees, but because it would make the public service more attractive as a career and thus draw better men into it.

Suspensions and removals. The governor has also the right to suspend or remove state administrative officers. This does not usually apply to officers who have been elected by the people. For the removal of an appointive official, the governor does not require the consent of the state senate. In the case of those who have won their places by civil service competition, the usual provision is that charges must be filed and a hearing given before the removal takes place.

C. ADMINISTRATIVE POWERS

The governor as head of administration. Most of the state constitutions contain a provision that the governor shall be responsible for the enforcement of the laws and shall be charged with the general oversight of state administration. This seemingly wide grant of power does not really mean very much unless the governor has the power to appoint and remove the heads of the various state departments. And this authority in many of the states, he does not possess. The judges of the state courts, the attorney-general of the state, the state treasurer, the state auditor, the superintendent of education, and so forth, are in most cases directly elected by the people. The chiefs of police in cities and the sheriffs in counties, both of whom have the immediate function of enforcing the law, are not appointed by the governor and are not ordinarily removable by him. Hence it is that, although the governor is sworn to execute the laws, he often does not control the only officials who can help him perform his sworn duty. In this respect the authority of the governor differs from that of the President. The President appoints the heads of all the Federal departments and can remove any of them at will. He selects the attorney-general, the Federal district attorneys, and the United States marshals. His control over them is complete. The governor has no such authority, although in some states there is a state police which is under his control.

D. FINANCIAL

The old budget system. In many of the states the governor has now acquired financial powers of great impor-

tance. Throughout the nineteenth century it was the custom to have the annual appropriation bills prepared by committees of the state legislature. Funds for the carrying on of state administration were provided by these bills, which were not grouped into a single budget but were presented to the legislature and passed one at a time. This was a wasteful plan and often led to extravagance. Every member of the legislature wanted something for his own district as a help to getting himself reelected. Frequently they worked together, each to get these favors for one another—a procedure known as *logrolling*. Very little attention was paid to the question whether there was enough money in the state treasury to pay for it all; hence deficits were frequent at the end of the year.

The new budget system. During the last twenty or thirty years, however, state budget methods have been gradually undergoing a change. In one state after another provision has been made for a regular budget system somewhat similar to that which has been adopted by the national government. In such cases the function of preparing the annual budget, which includes all the appropriations for the fiscal year, has been first of all entrusted to the governor or to some official directly under his control. When this first draft is completed, it is laid before the lower house of the state legislature, which submits it to the appropriate committee (usually the committee on finance, or on ways and means, or on appropriations). Then the measure works its way, under the rules, through both houses and finally reaches the governor for his signature. The legislature can change the appropriation if it so desires, making increases or decreases in the various items, but as a rule it does not make numerous changes. This is especially

true in the states which have given the governor authority to veto individual items in bills.

An alternative plan. As an alternative to this executive budget system, the initial steps in framing the measure are taken in some states by a legislative committee, and the governor does not have anything to do with the budget until it comes before him for his signature. This is called the legislative budget system. The committee is entrusted with the duty of obtaining from the various state departments a preliminary estimate of what they will need for the ensuing year. It also obtains figures concerning the probable income from existing taxes and other sources of state revenue. Then it goes over all these figures, cutting down the proposed expenditures or suggesting increases in taxation, until the estimates are about equal. After this has been done the results, in the form of a budget, are presented to the legislature for action.

E. MILITARY POWERS

The governor as commander-in-chief of the state militia. The governor has had military powers from the very outset. Ever since the Revolution he has been titular commander-in-chief of the state militia or National Guard. As a matter of fact, his military functions are performed for him by an adjutant general or chief of staff. Nevertheless, he may call out the militia in time of riot or other civil disorder, and he may also request the assistance of national troops where they are needed to quell internal violence, provided the state legislature is not in session at the time. If this body is in session, the legislature makes the request. Officers of the state militia or National Guard are commissioned by the governor, even though the actual appoint-

ments may not be made by him. Until 1916 the organization and discipline of the state militia was left very largely to the several states themselves; but in that year the provisions of the National Defence Act made most of these things uniform throughout the entire United States. Even in time of peace the organization and training of state troops are under the close supervision of the national government.

F. THE POWER OF PARDON

How pardons are granted. Just as the President has power to pardon offenders who have been convicted in the Federal courts, so the governor has a similar authority with respect to offenders who have been convicted in the courts of his own state, unless some other provision for the exercise of the pardoning power has been made. In most states the power to pardon rests with the governor alone. He may grant pardons or refuse them at his discretion. But in other states the pardoning power has been limited by the requirement that the governor must act in conjunction with a board of pardons or some such body. In a few states the entire power is given to such a board; the governor is sometimes a member of it and sometimes not. The general tendency has been to limit the governor's discretion in matters of pardon lest it be abused for personal or political ends. Some governors, indeed, have used their pardoning power too freely and unwisely. In flagrant instances, a governor has set free as many as a thousand prisoners in a single year. The power of pardon is intended to soften the rigor of the law and of justice where there are good grounds for doing so. It was never intended to be used as part of a governor's political machinery.

G. MISCELLANEOUS POWERS

Why governors are busy men. Finally, the governor has a considerable range of powers which must be called miscellaneous because there is no other way of classifying them. For example, he is the recognized channel of communication between his own state and the Federal government at Washington. When the national government has anything to say to the states, it communicates with the governors. During the World War, for example, the national government called upon the governors to assist in the army program by establishing draft boards for the administration of the selective-service law. The governor likewise, as has been pointed out, has the function of handing over fugitives from justice. Again, when a vacancy occurs in Congress, the governor issues a writ for a special election; he also appoints a United States senator from his state to fill a vacancy until the next senatorial election (provided the legislature has authorized him to do so), and he performs a great variety of incidental functions—receiving distinguished visitors, reviewing parades, signing documents by the hundreds, holding conferences with party leaders, interviewing applicants for offices, and making speeches somewhere every few days.

The increase of executive power and prestige. The powers of the governor are great and are steadily growing. They have enormously increased during the last hundred years. In early days the position was one of dignity and honor, but not of great authority or influence. The earliest governors had almost no appointing powers, no veto, and very little to do with state finances. To-day he is by far the most influential figure in state government. This is not only because he has acquired new legal powers, but

because he is usually the head of his party in the state. Sometimes he is both leader and boss, especially when his own party controls both chambers of the state legislature. The governor's office, indeed, has become one of the stepping-stones to the presidency. Among the last nine presidents of the United States, no fewer than four served as governors of their respective states before going to the White House. This is because the governor's position in a large state is an outstanding one, and very much in the public eye. The people of his state look to him for leadership. When he succeeds in state administration, he acquires a reputation in other parts of the country. Cleveland, Roosevelt, Wilson, and Coolidge were put in line for the presidency because of reputations which they gained in the governor's chair.

The House of Governors. Once a year a general conference of all the governors is held at one of the state capitols, a different one each year. Most of the governors attend, and those who cannot do so send the lieutenant governor or some other high state officer as their representative. At this annual conference of the *House of Governors*, as it is sometimes called, there is a discussion of matters which affect the interest of all the states. Much attention has been given to the subject of making the laws of the various states uniform on business matters so that transactions between business men living in different states can be facilitated, for example, in the collection of accounts.

State administrative officers. A distinction is usually made between executive and administrative officers. The former are the higher officials, the ones who have certain discretion in executing the laws and carrying out public policy. Administrative officers, on the other hand, come

somewhat lower down and have definite duties, with little or no part in deciding questions of general policy. The governor, for example, is always called an executive officer, while the secretary of the state board of health is designated as an administrative officer. The distinction is clear in such cases, but at times it is difficult to be sure whether an official comes in the executive or administrative class. When the attorney-general is elected by the people of the state and is not appointed by the governor, he may properly claim to be an executive officer, although his duties are largely administrative. At any rate, the distinction is not of great importance, and it has become the practice to include as administrative officers all the heads of the state departments, no matter how they were chosen. The organization of these departments will be discussed in a later chapter.

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QUESTIONS ON THE TEXT

1. What position did the governor occupy in the thirteen colonies? How was he chosen?
2. Explain the influence of the colonial tradition upon the powers of state governors after the Revolution.

3. How are governors chosen to-day? For what term? How may a governor be removed from office? May he be reëlected?

4. What are the governor's legislative powers? Explain the governor's veto, including the pocket veto. May he call the legislature in special session? Of what influence are the governor's messages?

5. Make a list of the principal state offices which the governor of your state has authority to fill. Explain the system of confirmation. May the governor remove state officials? If so, which ones?

6. How are officials chosen under civil service rules? What are the advantages and disadvantages of this system? How are promotions made?

7. Explain the older and newer methods of budget making in the states.

8. What is the scope of the pardoning power in the states and how is this power exercised? Distinguish between pardon, commutation of sentence, and reprieve.

9. Name some miscellaneous powers of the governor.

10. What is the House of Governors?

QUESTIONS FOR DISCUSSION

1. What changes would have to be made in your state in order to give the governor powers analogous to those possessed by the President?

2. Would you favor a provision that any bill recommended by the governor should have a right of way over all other bills pending in the legislature?

3. The powers of the governors are increasing; those of the legislatures are declining. Why? Is this movement dangerous?

4. Should the governor have a cabinet composed of the heads of the principal state departments? Why would such a plan not operate exactly as it does at Washington?

5. How many departments, boards, and commissions are there in your state? Can the number be decreased and their responsibility be made more effective? Show how.

6. Some governors have granted pardons by the hundreds in order to secure the support of certain politicians. Do you favor placing a restraint upon the governor's power of pardon? If so, why? How is this done in some states?

TOPICS FOR ESSAYS

1. The State Executive before The Revolution. 2. The Position of Governor in the Early State Constitutions. 3. The Growth of the Governor's Powers Since the Civil War. 4. The Governor as Commander-in-Chief. 5. Executive Influence on State Legislation. 6. Are Governors Being Overburdened? 7. Some Notable Governors of the Past Half-Century. 8. Pardons and Politics. 9. The Spoils System in the States. 10. How the Civil Service System Can Be Improved. 11. Pensions for Public Employees. 12. The Governor as a Party Leader.

SUBJECTS FOR DEBATE

RESOLVED:

1. That governors should have a four-year term like the President.
2. That confirmation of the governor's appointments should be abolished.
3. That the continued increase in the governor's powers is dangerous.
4. That the State of has too much administrative machinery.

CHAPTER XX

THE STATE COURTS

1. The state constitution, in many cases, provides that the governor shall appoint various officers: a commissioner of health, for example. Suppose the governor makes up his mind that there is no need for a commissioner of health and declines to appoint one. Could the state courts compel him to make the appointment? If not, what would be the procedure to secure observance of the constitution?
2. Various ways of choosing the judges for the lower state courts have been tried, and still other methods have been proposed. Among all these plans, which do you believe the most likely to prove advantageous: (a) appointment by the governor, (b) election by the people, (c) election by both houses of the state legislature in joint session, (d) appointment of judges in lower courts by the justices of the state supreme court, (e) election by the practicing lawyers of the state, (f) election by the people from a list of qualified candidates presented by the lawyers of the state? Justify your preferences.
3. Juries are sometimes used for the trial of civil cases when the amount at issue is very small. This means that a large number of persons must be called for jury service every year, especially in the cities. To escape this service, many people refrain from registering as voters, or if they do register as voters and are called for jury service, they try to get exemption from serving. In some courts it has become the custom to excuse from service all persons who can offer any plausible reason, such as illness in the family, business engagements, etc. Would it be well to reduce the general burden of jury service by abolishing jury trials in all civil cases?
4. In criminal cases, a jury cannot render a verdict of *guilty* or *not guilty* unless it is unanimous. Hence there is sometimes a dis-

agreement because one or two jurymen obstinately hold out against the other ten or eleven. Would you favor an arrangement whereby jury verdicts in criminal cases could be given whenever ten jurors agree?

5. The judge who presides over a jury trial is not allowed to express any opinion on the facts. He can only interpret the law. Do you think it would be well to let the judge give the jury his opinion on the facts, leaving the jurors to differ from him if they so desire?

Our dual system of courts. In addition to the Federal courts which have already been described, every state has its own system of state courts. These are established and regulated by its own constitution and laws. The state courts and the Federal courts are similar in their general organization and in their procedure, but two important differences ought to be noted. One is the fact that most judges of the state courts are elected by the people, whereas no Federal judge is ever elected. All Federal judges from highest to lowest are appointed by the President.

The second difference has to do with the range of powers possessed by the two sets of courts. The authority of the Federal courts is expressly defined by the Constitution of the United States (Article III, Sec. 2). It extends to certain classes of suits and suitors. Beyond these the Federal courts cannot go. The state courts, on the other hand, have all the judicial authority that is left. They administer the constitution and laws of the states; and since the state laws deal with a great variety of matters, the state courts naturally exert jurisdiction over a wide range and handle by far the larger portion of all our legal controversies.

The ladder of state courts. In every state there are three classes of courts, and sometimes four. Some of these are known as *courts of the first instance*; that is, cases come

before them without having been first heard in any other court. Others are known as *courts of appeal* or *courts of appellate jurisdiction*. Such courts do not hear cases when they first come up, but only when it is alleged that some error has been made in a lower court. The state courts thus form a ladder, as it were, with one rung of the judiciary standing above another. A case may sometimes be heard three or four times as it works its way through the various courts from lowest to highest. This does not mean, however, that the evidence is heard all over again each time. In the higher courts the issue usually relates to the interpretation of the law and does not concern the facts of the case. In such cases the higher courts hear arguments, not evidence.

Local state courts. First come the lowest state courts, which are known by various names. Sometimes they are called *justices' courts*, because they are presided over by justices of the peace. In cities they are more commonly known as *police courts* or *magistrates' courts*. Sometimes a city may have both; that is, a justices' court for the enforcement of state laws and a police court for the enforcement of the city ordinances. In nearly all the states the justices of the peace and police justices are elected by the people. In a few states along the Atlantic seaboard they are appointed by the governor. Everywhere the authority of these local courts is limited to the hearing of relatively minor cases such as misdemeanors which are punishable by a fine with the alternative of a short term in jail—violations of the traffic rules, or disorderly conduct, for example. They also have the right to try civil cases where the amount in question is small. Sometimes, however, the local court conducts a preliminary hearing where a serious criminal offence

has been alleged. In such cases it does not try the case but merely determines whether the accused person should be held for trial in a higher court. The local state courts do not usually sit with a jury, but in certain cases a jury may be summoned if either party so requests. The work of these local courts is of greater importance than most people imagine. They deal with an enormous number of cases every year, and it is from them that the average man obtains his ideas of American justice.

Intermediate state courts. Just above the local state courts are the tribunals which we may designate as intermediate courts, for lack of a better term. They are known by a great variety of names—county courts, district courts, superior courts, circuit courts, or courts of common pleas. But whatever their names, they are courts which hear appeals from the local justices or police courts, and in addition they exercise original jurisdiction over a considerable range of more important cases both civil and criminal. Serious criminal accusations are determined by them, and also civil suits where the amount involved is large. In other words, they are both appellate courts and courts of first instance. They are also known as *courts of record* because each is provided with a clerk whose business it is to keep track of the proceedings in full. These intermediate courts sometimes use a jury for the determination of the facts, and sometimes they do not. From their decisions, on points of law, there is usually an appeal to the supreme court of the state.

The state supreme court. Each state has its own supreme court. It is usually made up of from five to nine judges. These judges sit together and render their deci-

sions by majority vote. Sometimes they sit individually, but only to deal with routine matters which are not of sufficient importance to come before the court as a whole. New York has an arrangement which differs from that of the other states. In New York there is a supreme court which is not really supreme but is subordinate to a court of appeals; hence the latter is really the court of last resort. In most of the states the justices of the supreme court are elected by the people, usually for long terms, but in some states they are appointed by the governor. Where they are appointed, the terms vary all the way from two to twenty-one years, and in a few states the term of office is for life or good behavior.

Its powers and procedure. The state supreme court devotes itself almost entirely to the hearing of appeals on points of law, and only in very exceptional instances does it hear a case which has not already been heard in some lower court. Not having to do with questions of fact, it does not use a jury, but merely hears the arguments of lawyers with reference to cases which have been heard lower down and in which some legal error is alleged to have been made by the lower court. These lawyers submit parts of their argument in printed form, known as *briefs*. As a rule the decision of the state supreme court is final; there can be no further appeal. Its decisions are always final when the issue relates solely to rights claimed under the constitution and laws of the state, with no Federal question involved. If, however, the case involves some substantial claim under the provisions of the Federal constitution or the national laws, an appeal may usually be taken to the Supreme Court of the United States. For

example, if a person claims that he has been deprived of his property without due process of law by a decision of the state courts, he may make such an appeal.

A popular misunderstanding. It is well to lay stress upon this point, for there is a widespread popular impression that all state courts are subordinate to the Federal courts. This is by no means the case. The Federal courts do not stand above the state courts but run parallel with them—except at the final point. The resemblance here is not to a ladder but to a double set of gangways which meet at the farther end. Each set of courts is independent; each has its own field of authority and within this field cannot be controlled by the other; but inasmuch as the Constitution of the United States is superior to the constitution of any state in the Union, the Supreme Court of the United States must inevitably have the last word when the constitutional rights of a citizen are involved. Most lawsuits begin in the state courts and end there. Not one lawsuit in ten thousand ever gets to the Supreme Court of the United States. The latter has repeatedly declined to set aside the decisions of the higher state courts in matters affecting the interpretation of state laws. It has gone on the principle that those who engage in a lawsuit before the state courts must accept the decision of such court unless the decision seems to raise some issue of substantial importance relating to the interpretation of the national Constitution, laws, or treaties.

Declaring state laws unconstitutional. Likewise there is a popular impression that only the United States Supreme Court can declare a state law unconstitutional. There is no basis for that impression. When a state law is declared unconstitutional, in nine cases out of ten this is the result

of a decision rendered by the supreme court of the state. The latter may declare a state law unconstitutional at any time if it finds the law to be in conflict either with the constitution of the state or with the Constitution of the United States. Some laws, indeed, have been declared to be in conflict with both. When the courts of any state declare a state law to be unconstitutional, on either of the above grounds, the Supreme Court of the United States will not reverse such a decision.

Special state courts. In addition to the regular state courts as above described, every state has various special courts with local or intermediate jurisdiction. Among special courts which have local jurisdiction, mention may be made of the *small claims courts* which now exist in most American cities. These are courts in which anyone having a small claim against someone else may bring his complaint at an extremely low cost or no cost at all. These courts are informal in their manner of hearing cases and do not require the hiring of lawyers by either party. They are empowered to hear cases which involve small sums; for example, suits where the amount concerned is not above fifty or one hundred dollars. Again, there are *juvenile courts* whose business it is to hear and determine charges which may be made against young persons. The sessions of the juvenile courts are not public. Their aim is to set young offenders on the right track by placing them on probation or in some reform school, rather than by sending them to jail. Among special courts with intermediate jurisdiction are the *probate* or *surrogate courts* which hear questions relating to wills and inheritances. In some states there are no special courts for these matters, the work being done by the regular county courts. In a few states

there are *land courts* which have to do with the investigating and registration of titles to real estate.

Advisory judicial opinions. In general it is the duty of all these courts, whether regular or special, to confine themselves to the decision of cases which actually come before them and not to express opinions on any other matter; but in some states there are exceptions to this rule. In such states it is provided by the constitution that the justices of the supreme court may be called upon to express an "advisory judicial opinion" on any legal matter even before a case has arisen. The right to call for such opinions, however, is customarily restricted to the governor or the state legislature. If these authorities have any doubts as to whether a proposed law would be unconstitutional, they may call on the justices of the supreme court for counsel. The justices then give their opinion, but with the stipulation that this opinion shall not be binding if a case concerning the disputed point ultimately comes before them in the regular way. These advisory judicial opinions have been useful in preventing the passage of many unconstitutional laws by state legislatures.

Organization of state courts. In the lower and intermediate courts there is a single judge, as a rule, but in the state supreme court there is always a *bench* of judges, as it is called. Five or seven judges usually constitute the bench, although a few states have nine supreme court justices. These justices may be chosen in one of three ways. They may be elected by the voters, appointed by the governor, or named by the state legislature. The method of popular election is used in about three fourths of the states. There has been much discussion as to whether the system of appointment by the governor is not a better one as a

means of taking the courts out of politics. No categorical answer can be given to this question. Some states have secured good judges by each method. People will usually get the sort of judges they insist on having; whether they use the method of election or of appointment does not seem to make a world of difference. It has been suggested that the candidates for a supreme court justiceship should be confined to persons who have been nominated by the lawyers of the state, but nowhere has this suggestion been adopted.

The removal of judges. In the Federal courts the judges may be removed in one way only; that is, by impeachment. In the state courts the judges may be removed by impeachment before the state senate, but they may also be ousted in other ways. In twelve of the states there is provision for removal of a judge by resolution of the legislature, and in nine others it is provided in the state constitution that the governor may remove any judge on an "address" of the legislature. In other words, the two houses of the state legislature may request the governor to remove a judge from office and the governor may comply or not as he chooses. In seven of the states a judge may also be removed from office by means of the recall. The recall, as already explained (pp. 364-365), is a process by which petitions are presented to the proper authorities asking for the removal of some public official. If such a petition is signed by a sufficient number of voters, the question of recalling the judge is placed on the ballot at the next election.

Judicial procedure. When a dispute arises between two parties, or when some offence is charged against an individual, there are usually two questions to be decided. The first question is: What are the facts? What actually

took place? The second question is: What does the law provide with reference to these facts? Which of the parties is ~~in~~ the wrong under the provisions of the law? When you charge some one with having done you a wrong, it is not enough to prove that a wrong has been done you. You must also convince the court that the law, in some of its provisions, gives you a right of redress for that wrong. In other words, every lawsuit involves two questions; one relating to the facts and the other to the law. It is the business of the court to decide both of these matters, but not necessarily in the same way. As a general rule, matters of fact (if of sufficient importance) are determined by a jury, while matters of law are determined by a judge. Thus the judge and the jury, sitting in the same courtroom but with different functions, decide the case between them.

The grand jury. There are two kinds of juries, but they are selected in different ways and their functions are by no means alike. The first is known as the *grand jury*. It is a body of from seven to twenty-three persons, chosen by lot from the county or district, and charged with the duty of investigating whether crimes have been committed. Evidence is presented to it by the prosecuting attorney, or district attorney; but the grand jury may also make investigations on its own account if it so desires. Bear in mind, however, that the grand jury conducts an investigation, not a trial. It does not convict or sentence anybody for any offence. But if it decides by majority that there are reasonable grounds for placing some one on trial, it lays before the court a statement to that effect. This statement is known as a *true bill* or an *indictment*. When a person is indicted by a grand jury, he is at once taken into custody and arraigned for trial before one of the regular

courts. Moreover, if the grand jury believes that the conditions existing in any public institution, such as a jail or poorhouse, or in the county or district as a whole, are not what they ought to be, it submits to the court a recital of these conditions. This is known as a *presentment*. A presentment does not necessarily cause anyone to be placed on trial.

The trial jury. The other kind of jury is known as a *trial jury* or *petit jury*. Almost always this trial jury consists of twelve persons. Its function is to hear evidence and render verdicts. The method of selecting a trial jury is, in general, as follows: Some public official, who is designated by law for this purpose, makes a list of all the persons within the county or district who are liable for jury service. This list is usually compiled from the register of voters, leaving off all persons (such as lawyers, physicians, and public officials) who are exempted by law from the obligation to do jury service. From this list a certain number of names, perhaps a hundred, are then selected by lot. These individuals are thereupon summoned to court, where they form what is known as a jury *panel*. When the time comes to select a jury, their names are called in court and the lawyers on either side of the case may then examine such members of the panel and state their objections to them or accept them, as the case may be. Or individual members of the jury panel may ask the judge to excuse them from service.

When twelve persons have been found to whom there is no objection on either side, these twelve constitute the jury and proceed to hear the facts. A trial jury, however, can hear only such evidence as the judge permits it to hear; for questions as to the admissibility of certain evi-

dence are questions of law. For example, a witness may offer to tell what he heard some one say. The lawyer on the opposing side objects that hearsay is not evidence and should not be admitted as such. The judge then decides whether the objection is valid. But the value of all evidence, after the judge has allowed the jury to hear it, is for the jury itself to decide.

How a case is tried. The usual procedure in a criminal or civil case before a jury is this: When the jury has been chosen and sworn, the prosecuting attorney (or, in a civil case, the counsel for the plaintiff) states to the court what he intends to prove. Then the witnesses for the prosecution or for the plaintiff are called, put upon oath, and questioned. As each witness finishes his direct testimony, the defendant's counsel takes him in hand for cross-examination. The purpose of this cross-examination is to test the witness to see if he is telling the truth, or to induce him to say things which will weaken his original testimony. When the witnesses for the prosecution have finished, the witnesses for the defendant are called, and they are likewise cross-examined by the other side. After all the testimony is concluded, the lawyers on both sides make addresses to the jury. Then the judge explains to the jurymen the points of law bearing on the case, and the jury retires to consider its verdict. This it does in secret, remaining in a room which no one is allowed to enter or leave.

Disagreements, new trials, and second jeopardy. In criminal cases the verdict must be unanimous one way or the other. If the jury reports that it cannot agree, the case has to be tried all over again.¹ In civil cases unanimous

¹If, however, the jury stands ten to two, or eleven to one in favor of acquittal, the prosecuting attorney usually drops the case and does not place the accused on trial again.

verdicts are required in some states but not in others. The verdict, whatever it may be, is reported in open court and is final, as a rule. Under certain circumstances, however, the presiding judge may set a verdict aside and order a new trial—for example, if he believes it to be clearly against the evidence. Where an accused person is found not guilty by the unanimous verdict of a jury, he may never, under any circumstances, be placed on trial for the same offence again. This principle is known as the rule against *second jeopardy*. If he is found guilty, on the other hand, he has in most cases the right to appeal to a higher court.

Value of the jury system. The jury system is of great value, but it has some serious defects. Its value consists in assuring to everyone a fair trial of the facts by an impartial body of his neighbors, each of whom is sworn to decide without fear or favor. It is a great safeguard against the tyranny of judges and public officials. On the other hand, it makes lawsuits expensive, for the jurymen have to be paid; it makes trials much longer than if the evidence were heard by a judge alone; and the requirement that verdicts shall be unanimous often results in no verdict at all. Exemptions from jury service have been given too freely, so that juries are sometimes made up of men who serve because they have no other work to do. Most busy people are either exempted by law or ask to be excused by the court. Prolonged trials and close confinement make jury service a burden which many people try to evade. In serious cases the jurymen are sometimes not permitted to visit their homes for weeks at a time; they sleep in the courthouse, have their meals under the watchful eye of the sheriff, and are not permitted to read the newspapers

while the trial lasts. Occasionally we have seen the absurd spectacle of a jury kept under guard while the prisoner was out on bail. Yet with all its faults the jury system affords a safer method of trying criminal cases than trial by a judge alone. On the other hand, the use of jury trials in civil cases, particularly when the matters in dispute are not of great importance, tends to delay the work of the courts. It has been suggested that all such cases ought to be tried by the judge without a jury.

The reform of judicial procedure. Various measures for reforming and improving the administration of justice in the state courts have been suggested and deserve attention. One suggestion is that there should be fewer exemptions from jury service. If every citizen, man or woman, were required to serve, there would be no occasion for anyone to serve often. Trials should be made more speedy by giving the judge more authority to push matters along where lawyers are trying to make delays. Appeals should be limited to cases where there are good grounds for such action. It should be established as a principle that no decision of a lower court will be reversed by a higher court on merely technical grounds, but only where there appears to have been a denial of justice. Perhaps it would be well to provide that, even in a criminal case, the verdict may be rendered by ten jurors out of twelve. At any rate, our judicial procedure is too slow and ought to be improved.

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QUESTIONS ON THE TEXT

1. Why do we have a dual system of courts in the United States? Has this arrangement any historical significance? If so, what is it?

2. Enumerate by name your state courts. What is the jurisdiction of each? How are the judges chosen in your state? Is this the way they are generally chosen throughout the United States? For how long are your judges elected or appointed? How may they be removed?

3. Are the state courts subordinate to the Federal courts? If so, to what extent? When may a Federal court declare a state law unconstitutional? May a state court declare a Federal law unconstitutional?

4. Name some special state courts. What are their functions? Is it desirable to have such special courts or should all cases be heard in the regular courts?

5. What is the value of a juvenile court?

6. What are the duties of the probate or surrogate courts? Land courts? Small claims courts?

7. What officials are attached to each of the courts in your state system?

8. What is an advisory judicial opinion? Are such opinions given by the supreme court in your state? By the Federal Supreme Court? Is there any danger in having a court give an advisory opinion on matters before having heard both sides argued?

9. Describe the procedure in a civil case; a criminal case.

10. Define (a) grand jury, (b) petit jury, (c) plaintiff, (d) prosecuting attorney, (e) defendant, (f) court summons, (g) jury panel, (h) oath, (i) indictment, (j) verdict, (k) sentence, (l) second jeopardy.

11. When may a person have a new trial? May he be kept in jail without a charge being made against him? Explain.

► **12.** Of what value is the jury system? Ought jury trials to be restricted to criminal cases? Why? Ought the requirement of unanimity to be abolished?

13. What reforms would you propose in the existing judicial procedure?

14. Should judges be permitted to address the jury on the facts of a case; for example, to tell the jury that certain witnesses, in his opinion, did not tell the truth? Explain.

15. What restrictions have been placed on the courts by the constitution of your state? Are they all necessary or desirable? Explain.

QUESTIONS FOR DISCUSSION

1. In the new German constitution it is provided that any employed person who is called to do public service without pay shall be compensated by his employer during such absence at rates to be determined by law. In the United States, when employed persons are called for jury service they get a nominal remuneration, usually three dollars a day, although they may be earning twice that rate at their regular work. Hence many skilled workmen try to avoid jury service because of the financial loss involved. Would you favor something like the German plan?

2. In France the judge is entirely free to decide what evidence may be admitted. He may let a witness repeat mere hearsay, and he usually does. In the United States the rules of evidence are laid down by law and the judge must not admit any evidence unless the law provides that it is admissible. Which system do you prefer?

3. Some of the recommendations for the reform of criminal procedure are as follows:

(a) The fact that the juror has heard of the case and has formed an opinion should not disqualify him if he is satisfactory to the judge.

(b) If the accused fails to testify as a witness, his failure may be commented upon by the judge or by the counsel.

(c) The judge should instruct the jury as to the credibility of the evidence.

(d) A five-sixths verdict should be sufficient to convict except where the penalty is death.

(e) A pardon or parole should not be granted until notice has been given to the prosecuting officer and judge who tried the accused, and the reasons should be made public five days before taking effect.

(f) A defendant asking for an appeal should remain in jail until the appeal is heard.

(g) When the plea for the defendant is insanity, the judge should summon an impartial expert and the county should pay the latter.

(h) The prosecuting attorney should not be allowed to drop a case against an indicted person without the consent of the judge.

What do you think of these recommendations?

TOPICS FOR ESSAYS

1. The Local Courts of the State. 2. Municipal Courts: Their Organization and Jurisdiction. 3. The State Supreme Court. 4. Judicial Review of State Legislation. 5. Small Claims Courts. 6. Judge Lindsey and the Juvenile Court Movement. 7. Probate Courts: What They Do and How They Do It. 8. Advisory Judicial Opinions. 9. The Removal of Judges. 10. The Usual Procedure in a Criminal Case. 11. The Usual Procedure in a Civil Case. 12. The Value and Shortcomings of the Jury System. 13. Constitutional Restrictions on the Courts. 14. The Law's Delays. 15. Election *versus* Appointment of Judges.

SUBJECTS FOR DEBATE

RESOLVED:

1. That every citizen should be required to do jury service.
2. That judges should be appointed for life or good behavior.
3. That all police officers should be under state control.

CHAPTER XXI

STATE DEPARTMENTS AND BOARDS

1. "In order to be truly responsible to the people, a government must be intelligible to them. Our state governments to-day are beyond the power of the average citizen to understand. The national government is simple by comparison." Is this so, and if so, why?
2. "To secure effective regulation of public utilities the members of the state public utilities commission must be elected by the people for short terms of office and must be subject to recall at any time." Give your criticism of this statement.
3. "The difficulties of government increase as the square of density." This is said to be a law of governmental administration. Do you understand it? Give some illustrations to show that it is or is not true.

The growth of administration. In the early days of American government the functions of the state were largely confined to the maintenance of law and order. Very little work of a constructive or promotional type was undertaken. Hence only a few administrative offices were needed and the incumbents of these offices were either chosen by the state legislature or elected by popular vote. Until well into the nineteenth century there were no state "departments" in the modern sense, but merely individual officers who performed such administrative duties as were needed, and even at that did not devote their full time to the public service. Gradually, however, the functions of state government increased, and with this expansion the administrative offices were enlarged into regular departments. Not only

that; they were also created one after another to meet new needs, until the present huge mechanism of state administration came into being. Population has created problems, and problems have inspired the creation of new departments.

State departments to-day. In the national government, when new functions are taken in hand, the usual practice has been to place the work within one of the existing departments. Only in exceptional cases has it been deemed necessary to create special boards, commissions, or other agencies to do the work.¹ As a result of this policy the administrative machinery at Washington is relatively simple. In the states, on the other hand, the practice has been to deal with new problems by establishing, one after another, independent offices or agencies outside the older administrative departments. Consequently, in some of the larger states there are now sixty, seventy, or even one hundred different boards or commissioners, or bureaus, or other separate centers of administrative authority.

An extreme example of its complexity. A few years ago the state of New York had well over one hundred of these agencies, the more important of which were as follows: state engineer; superintendent of insurance; superintendent of banks; commissioner of excise; superintendent of public works; commissioner of education; commissioner of agriculture; forest, fish, and game commissioner; commissioner of health; state civil service commission of three members; prison commission of seven members; superintendent of prisons; superintendent of public buildings; state architect; tax commission of three mem-

¹The exceptions are steadily becoming more numerous, however. Witness the Federal Trade Commission, Federal Farm Board, Tariff Commission, etc.

bers; commissioner of labor; lunacy commission of three members; board of charities; managers for a large variety of charitable and reformatory institutions; fiscal supervisor of state charities; water supply commission; land office commission; canal board; commission for the canal fund; state board of canvassers; equalization board; classification board controlling wages of labor for state employments; state historian; miscellaneous reporter; quarantine commission; superintendent of weights and measures; commission for the promotion of uniform legislation in the United States; agent for the Indian tribes; voting machine commission; board of pharmacy; embalming board; state fair commission; statutory consolidation board; highway commission; and public service commission—to say nothing of some other minor independent commissions and offices.

Recent consolidations. During recent years, however, there has been a movement for the consolidation of these numerous administrative agencies and in several states this movement has been successful. Illinois in 1917 adopted a general program of administrative reorganization by which the numerous statutory offices were consolidated under nine departments, as follows: finance, public works, public health, agriculture, labor, mines and minerals, public welfare, trade and commerce, and education. More recently this list has been increased by the addition of two other departments, namely: conservation and construction. Since the Illinois experiment a dozen other states have undertaken similar administrative consolidations. In some cases this has been done by legislative action, in others by making changes in the state constitution. No two of these states have reduced their departments to exactly the same footing, but in a general way they have all followed the same

principle, which is that of concentrating under the governor the responsibility for most of the state's administrative work. It is a sound principle and ought to be followed consistently.

Four types of administrative machinery. In general four types of administrative machinery are represented in the existing state systems. *First*, there are the older offices such as that of secretary of state, or attorney-general, which have existed from the very outset and the occupants of which are almost everywhere elected by direct popular vote. These state officers are not responsible to the governor and are not removable by him. *Second*, there are various new departments, each with a single head who is appointed by the governor for a definite term of years, usually with the approval of the state senate, or in certain exceptional cases with the approval of the governor's council. This method of departmental organization is customarily used where the duties of the department are definitely prescribed by law—for example, where they have to do with the supervision of banks and insurance companies.

Third, there are some state departments which have been placed under the supervision of boards or commissions, the members of which are sometimes appointed by the governor, and sometimes elected by the people. In a few exceptional cases they are chosen by the legislature. As a rule such boards are so constituted that one member retires every year or every two years, thus giving continuity to the board's work. Sometimes the members of these boards are paid large salaries and give all their time to the work. This is usually the case, for example, with public utilities commissions. In other instances the members of these administrative boards are paid small salaries, or a per-diem

allowance for each meeting, and give only part time to their work—for example, in the case of civil service commissions, boards of medical examiners, or boards of agriculture. *Finally*, the members of state administrative boards are in some cases expected to give their services without pay, as in the case of state boards of charities, or regents of the state university, or state library commissions, and so forth. Where members of state commissions are unpaid, or where they give only a small portion of their time to public work, it is the custom to have some paid officer directly in charge of the work under their supervision. A state board of education, for instance, may have seven or nine members who receive no salary, but the real administrative work is done under the board's direction by a state commissioner or superintendent of education.

The quasi-legislative character of some state commissions. We customarily speak of all these boards as having administrative functions to perform, but as a matter of fact some of them exercise powers which can properly be called quasi-legislative or quasi-judicial. In other words their work is of the nature of lawmaking, or law interpreting. State boards of health, for example, make all sorts of regulations which have the force of law. This is because the state legislature, by its public health statutes, cannot well cover every contingency which may arise. Accordingly it provides in such statutes that the state board of health may make and enforce reasonable regulations for the abatement of nuisances, the inspection of milk, the prevention of epidemics, and so on. In the exercise of this authority the state board of health usually builds up an elaborate code of health and sanitary regulations which are enforced by its own inspectors. In that sense a state board becomes

not merely an administrative, but a quasi-legislative body; in other words a body whose functions are similar in part to those of a legislature.

Quasi-judicial boards. Again, some state boards possess jurisdiction which is quasi-judicial in character. Take the state tax commission, for example. It usually determines after a hearing whether assessments for taxation made against corporations and individuals shall stand or be altered. It also interprets the tax laws when disputes arise as to whether certain property is taxable or exempt from taxation. Another good illustration is afforded by the public utilities commission, which has the function of approving rates charged by street railways, gas companies, electric lighting companies and other public service corporations. When an individual or municipality believes that the rates charged by any such company are excessive, or when an improvement in service is desired, a petition is filed with the public utilities commission at the state capital. The commission then orders a hearing to be held on the complaint, and at this hearing both the petitioners and the company are entitled to be represented by their attorneys. Testimony is taken, the attorneys make their arguments, and the commission gives its decision just as a court would do. It should be pointed out, however, that these decisions of administrative commissions are not necessarily final. There is always (or virtually always) a right of appeal to the regular state courts which have power to overrule the decisions of any administrative commission if they believe such finding to be contrary to law. As a matter of fact, however, such appeals are not numerous. In the great majority of cases the commission's ruling is allowed to stand.

The more important state officers: the lieutenant governor. Most states have a lieutenant governor, who is nominated and elected in the same way as the governor. Under the state constitution he is the legal successor of the chief executive in case the latter dies, or resigns, or is removed from office, or becomes incapacitated from performing his duties. Some of the states have no lieutenant governor, but merely provide that some other officer (usually the president of the state senate) shall succeed in case of a vacancy. As in the case of the Vice President, it was thought desirable to give the lieutenant governor something to do. Hence he is generally designated in the state constitution as presiding officer of the state senate with a vote in case of a tie. To this there are some exceptions, especially in the New England states, where the lieutenant governor is not the presiding officer of the state senate, but is a member of the governor's council.

The secretary of state. Every state has an officer known as the secretary of state, and his functions are much the same in all of them. He is, as his title indicates, the chief secretarial officer of the commonwealth. In general he is the keeper of the state archives; he arranges for the printing and distribution of the laws after they have passed the legislature; he authenticates all official documents which are signed by the governor; and as a rule he is the keeper of the election records. In some states this official is entrusted with duties relating to the incorporation of companies and the preparation of various documents and reports. The great seal of the state, which must be placed on all important official documents, is usually placed in his keeping.

The state treasurer. Every state also has a treasurer;

necessarily so, because some one must be entrusted with the custody of the state funds. Like the secretary of state the treasurer is usually chosen by popular vote and in some states is not allowed to hold office for more than a certain number of years. This limitation is designed to make sure that no defalcation in his office can be long continued. The state treasurer receives the state's income from taxes, fees, fines, and other sources of revenue. He puts this money into the general treasury or into special funds as the case may be. Then he pays it out on warrants issued to him by the comptroller or auditor, who in turn acts under the authority of appropriations made by the legislature. As a rule no money can be paid out of the state treasury except after an appropriation duly made by law; but to this rule there are some exceptions. Occasionally, for example, a legislature provides that the income from certain sources shall be placed at the disposal of some state board to be used year after year for its special purposes without any further legislative action. Thus a state legislature may provide that the proceeds of the gasoline tax shall be usable by the public highways commission for the construction of roads; or it may stipulate that the fees paid by applicants for admission to the practice of law shall go to the state board of bar examiners for the payment of its expenses. In all such cases the money does not usually go into the general treasury but into special funds and is disbursed without any special appropriation by the legislature.

The comptroller or auditor. Mention has been made of the state comptroller or auditor. His functions differ from state to state, but in general he has two principal duties: first, to conduct a running audit of the accounts in all the state departments; and second, to issue warrants for the

payment of bills. The usual method of collecting an account from the state treasury is as follows: Some branch of state administration (the state engineer's office, for example) wants certain supplies. It secures them through the state purchasing department when there is one, or by direct purchase outside if there is no such department. Then the bill for these supplies comes in. It is approved by the department concerned and sent to the comptroller or auditor. He checks up to find whether there is an appropriation available for the purchase of supplies in this department and makes sure that the appropriation has not been already exhausted. If he finds that there is money available, he issues a warrant on the state treasurer and the latter sends a check in payment. This roundabout procedure is essential in order that there may be no wrongful use of public funds in paying for goods which have not been received, or by overpayments, or by paying twice for the same supplies, or by spending money for which there is no appropriation.

The attorney-general. The attorney-general is the chief legal adviser of the state government. When any department of state administration has doubts concerning the legality of some contemplated action, the usual step is to ask for an opinion from the attorney-general's office. In addition this office defends all actions against the state and may take charge of prosecutions on the state's behalf. Minor prosecutions are left to the district attorneys, but in very important controversies the attorney-general may be called upon to step in. The district attorneys are usually elected by popular vote in their respective districts, but in some cases it is provided that the attorney-general may remove a district attorney from office or may

himself step in and take charge of the prosecution in any case.

Boards of public property and public works. Many state boards can be grouped under this general heading. Thus there are state boards of forestry in charge of public lands, state boards of fisheries in seaboard states, highway commissions, bridge commissions, canal boards, boards of public works, and other agencies of the same sort. These commissions have functions which are roughly indicated by their respective titles, but their detailed duties differ from place to place because the nature of the public property is not the same in all parts of the country. Such boards usually have from three to seven members and the more common practice is to give the governor the right of appointing their members. It is occasionally provided that members of these boards shall represent both the major political parties. This provision is designed to make sure that patronage in the way of contracts and other favors shall not be used for the benefit of one political party alone.

Boards of education, charities, and health. The commissions described in the preceding paragraph deal largely with physical or material things. Their work is concerned with lands and roads, bridges, forests, buildings, and other inanimate affairs; but there is a second group of state boards which have to do with social activities, in other words with matters in which the personal and human element is strongly featured. These boards are usually larger in size, having sometimes nine or eleven members. As a general rule, although not always, the members of these social welfare commissions are unpaid. They are ordinary citizens, both men and women, who give a portion of their time for the public service without remuneration because

of their personal interest in education, or in the relief of the poor, or in the protection of public health. Members of these boards should always be appointed and never elected by popular vote, but this rule is not always observed. In some cases the members of state boards of education are chosen at the polls.

Boards of public regulation. A third group of state commissions has to do with the supervision of banks, insurance companies, and other financial corporations. Likewise there are boards of arbitration and conciliation, boards of factory inspection, workmen's compensation boards, civil service commissions, and many other such bodies with duties of a regulatory character. Mention has already been made of the public utilities commission, which is also in this category. Again, there are the various boards of registration or of examiners which control the admission of men and women to the several professions and to some of the ordinary vocations. Under this head you will find state boards of medical examiners, bar examiners, and examiners in dentistry and in architecture—in some cases an examination is necessary for license to keep a drug store, or to work as a plumber, or to run a beauty parlor. The regulatory work of state administration is steadily expanding. In some instances the board system has been abandoned and parts of this supervisory work have been entrusted to individual commissioners. This is particularly true in the case of banking and insurance.

Boards of assessment, taxation, and finance. Another group of state agencies has to do with financial matters. Often there is a state board of equalization which has technical duties in connection with the levying of state taxes upon municipalities. Many states have tax commis-

sions with the duty of interpreting and enforcing the various laws which relate to indirect taxation—for example, on the earnings of corporations, on franchises, on inheritances, etc. Sometimes there is a sinking fund board which has the custody of those funds which are being accumulated for the payment of state debts at maturity. Mention should also be made of the special commissions which are established from time to time to study various problems of taxation and finance. These bodies usually make their reports to the governor or to the legislature and then go out of existence.

The reconstruction of state administration. From the foregoing paragraphs it will be seen that the machinery of state administration is extensive and complicated. It consists of departments, boards, commissions, commissioners, bureaus, divisions and other agencies which literally run into the hundreds. This mechanism has been built up over a long term of years without any set plan or purpose. In scarcely a single state of the Union does the plan of administrative organization disclose any unity or logic. It merely embraces a large collection of disjointed authorities with no common center of responsibility. Elihu Root spoke of them some years ago as “administrative agencies, big and little, lying around loose, accountable to nobody, spending all the money they can get.” No wonder there has been a strong movement for consolidation. In connection with this movement some mention should be made of the *Model State Constitution* which has been prepared by the National Municipal League. This model constitution proposes that the heads of all departments shall be appointed by the governor and shall be removable by him at any time.

Divisions and bureaus within the departments. Al-

most every state department is divided into bureaus or divisions with a bureau chief, or deputy commissioner, or superintendent at the head of each. These officers are usually appointed by the governor on the recommendation of the department heads. They divide the work of the department among them. For example, the department of public health may have bureaus of sanitation, food inspection, water supply, and milk supervision. The expansion of state functions has led to a great increase in the number not only of departments, but of bureaus within these departments. To realize this one need only make a chart showing the structure of state administration from top to bottom.

The state employees. Within the bureaus and divisions of departments are minor officers and employees of all grades. They include foremen, engineers, draftsmen, accountants, bookkeepers, clerks, inspectors, stenographers, messengers, and officials of many other classifications. In many states they are all appointed under civil service rules. The salaries of these subordinate officers and employees are fixed by the state laws or by administrative regulations. In some states there is a standard classification of positions, with regular salaries attached to each and with definite rules as to promotions. State employment has not been attractive because increases in pay have too often depended upon political influence or favoritism rather than on merit. This situation, however, is being gradually improved.

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QUESTIONS ON THE TEXT

1. What is meant by saying that the early functions of the state were largely protective, whereas to-day they have become largely constructive and promotional?
2. Explain the different policies that have been pursued in national and in state government as respects the creation of new administrative machinery.
3. What is the Illinois plan of administrative consolidation? Show how consolidations link up with the short ballot movement.
4. Explain the four types of state administrative agency.
5. Do administrative boards ever make laws? How? Do they exercise judicial power? To what extent? Give examples.
6. Is the lieutenant governor an *administrative* or an *executive* officer? Explain the difference between the terms in italics.
7. Give the chief functions of (a) the secretary of state, (b) the state treasurer, (c) the attorney-general, (d) the state comptroller or auditor.
8. What are the four chief divisions to be found among state boards? How should boards of each be chosen? Should all members of state boards be paid?
9. How is the interior organization of a department usually arranged? Make a chart showing how it is done in some department of your own state.
10. Why does state employment fail to attract the most capable young men and women who are graduated from high schools and colleges? Would you be reluctant to enter the state service as a life career? If so, why?

QUESTIONS FOR DISCUSSION

1. Is state government trying to do too much? Can some state functions be better handled by the counties and cities? Which ones?

2. "Every state department ought to have a single commissioner, not a board, at the head of it." Do you agree?

3. "Too much consolidation of state departments is worse than too little." Is there any basis for this statement? If so, what? At what point should consolidation stop?

4. Is the civil service system undemocratic in that it gives an advantage to those who have had an education and can pass examinations well?

5. The Massachusetts Civil Service Commission recently found that among 6,000 applicants for positions in the state and municipal employ, no fewer than 1,200 had been convicted in court for some major or minor offence. Of this 1,200 nearly half had concealed the fact in their applications. Comment on this.

6. Do you believe that public officials, after serving thirty years or more in appointive offices, should be able to retire on pensions provided from the public treasury? Why?

TOPICS FOR ESSAYS

1. Recent Administrative Reorganizations in the States. 2. Public Utilities Commissions. 3. State Boards of Education. 4. The Attorney-General's Office. 5. Securities against the Misuse of State Funds. 6. State Tax Commissions. 7. The *Model State Constitution*. 8. A Graphic Representation of a State's Administrative System. 9. How State Departments Are Internally Organized. 10. The Classification of State Employees. 11. The Service of the State as a Career.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the heads of all state departments should be appointed by the governor.

2. That all who serve the state in any capacity should be paid for their services.

3. That district attorneys should be appointed by the attorney-general and removable by him.

CHAPTER XXII

WHAT THE STATE GOVERNMENTS DO FOR THE PEOPLE

1. So long as there are forty-eight states, each exercising jurisdiction over various matters, there will inevitably be great differences in the laws and procedure from state to state. In some cases a state will secure advantages over other states by the laxity of its laws or standards—for example, in laws relating to the granting of divorces, the regulation of child labor, or the taxing of inheritances. Would you favor the idea of transferring to the national government full control of all such matters? Explain.
2. The Baumes Law in New York state provides that anyone who has been four times convicted on felony charges shall be sentenced to prison for life. Do you believe this law too drastic or too inflexible? Should indeterminate sentences be imposed for all serious offences? Should probation ever be granted after the first offence? Should capital punishment be abolished? Justify your answer in each case.
3. There are two ways of regulating the rates which may be charged by an electric-lighting company. One is to fix the rate in the franchise. The other is to let a public service commission fix the rates from time to time in accordance with the existing costs of service. Which plan is preferable? Should there be a public service commission in each city or one commission for the whole state? How should such commissions be chosen? Can a public service commission fix rates so low that a company makes no profit? If not, what stands in the way of its doing so?
4. One state law provides that women and children may not be required to work in factories for more than 48 hours per week. It is held constitutional. Another provides that motormen may not be required by street railways to work more than eight hours at

a stretch. It also is held constitutional. A third law stipulates that men employed on farms may not be required to work more than eight hours a day. It is held unconstitutional. Why this difference?

Importance of the state's work. Many people have an impression that the greater part of American government is centered at Washington and that only the minor portion of it is performed by the several states. This idea is partly due to the newspapers, which give a large amount of space to the deliberations of Congress and to the work of the national executive, but devote much less attention to what is going on at the state capitals. Every day there are headlines about what the President has said or done, or on what Congress proposes to do; but not nearly so often does the governor or the state legislature get a place on the front page. This difference in publicity value gives rise to the erroneous popular impression that what the states do for the people is of minor consequence. As a matter of fact the greater part of the entire work of governing the American people is performed by the authorities of the forty-eight states. The work of the national government is by nature more picturesque, more striking, and attracts far more public attention, but this does not mean that it is more vital to the well-being of the whole people. On the contrary, it is the state government that comes closest to the interests of the average citizen.

The citizen's contact with it. Where the individual comes into contact with the national government once, he comes into contact with his state government a dozen times. It is his state government, for example, that provides nearly the whole fabric of civil and criminal law. It likewise provides most of the machinery for the enforce-

ment of these laws. It creates and supervises the administration of local government in counties, cities, towns, townships, and other subordinate divisions of the state. It provides the network of roads over which so much traffic is carried on nowadays; it maintains a great variety of public property such as courthouses, bridges, harbors, or reservations; it exercises control over many banks, insurance companies, business houses, and commercial corporations; it regulates the rates and service of local public utilities; it controls the entire field of public education and often maintains a state university; it is responsible for safeguarding the public health; and it adjusts the relations between labor and capital. All in all it is not easy to overestimate the importance of the work performed by the forty-eight state governments and its vital relation to the public welfare.

Civil and criminal law. First of all, the state provides most of the laws, both civil and criminal. Civil law is the term applied to that branch of the law which deals with noncriminal matters. For example, it covers the making and enforcement of contracts, the collection of debts, and the payment of damages when wrong is done. Criminal law, on the other hand, deals with crimes and their punishment. In civil cases one individual proceeds against another; in criminal cases the state prosecutes the offender. In civil suits the loser is usually condemned to pay a sum in damages which goes to the plaintiff; in criminal cases the usual penalty is a fine or imprisonment, and when a fine is imposed it is paid into the public treasury. There are also two kinds of law, namely, the common law which has existed from early times and statutory law which is being enacted from year to year by the legislatures. The

common law is now to be found, for the most part, in decisions of the courts. When the common law conflicts with a statute the latter prevails. In some states the common law (somewhat modified by various statutes) is applied in both civil and criminal cases; in other states there are regular codes of civil and criminal law. A code is a general compilation which contains all the laws relating to a particular field and hence may largely set aside the common law. The civil code contains all the laws relating to civil matters, while all criminal laws are contained in a criminal code. The common law, in these states, is not wholly set aside, but only to the extent that the codes are at variance with it.

Prisons and houses of correction. Not only do the various states provide us with most of our laws, but they maintain the machinery of enforcement and correction. Every state maintains institutions for the custody of offenders who have been sentenced by its own courts. Until about a generation ago it was the custom to imprison offenders of all types, old and young, in the same institution. Every county had a common jail in which all the prisoners were confined. Nowadays, however, it is becoming customary to classify prisoners and to send each class to a special institution maintained by the state. Prison reform involves the separation and special treatment of each class; hence we have state prisons for women and reform schools for youthful or first offenders. Likewise there are institutions for the criminal insane. The state penitentiaries are being more and more reserved for the imprisonment of hardened criminals. Imprisonment is not nowadays looked upon as a form of retaliation, a form of revenge taken by society upon individuals who have done

wrong; rather it is regarded as a means of protecting society against further wrongdoing and as a possible method of reclaiming the individual offender. Hence it is now generally recognized that prisoners should be kept employed at useful labor, and that whenever practicable, those who have not already learned a trade should be taught one during their prison term. A good deal of educational work is being carried on in reform schools and other institutions of correction.

Improvements in our correctional methods. Two notable improvements in correctional methods have been brought into use during recent years. One of them is the use of indeterminate sentences. The old plan was to sentence every prisoner for a certain term; two years, ten years, or some such period. The convict then served out his full term without reference to his good or bad behavior. This plan is now being abolished. Instead the general practice is to make the sentences flexible; for example, not less than two nor more than ten years. Under this system the prisoner is enabled, by good behavior, to secure his release when the minimum period has expired. On the other hand, if his behavior is not satisfactory he may be required to serve out the maximum term. Similarly the parole system has been brought into use as a means of encouraging good behavior on the part of prisoners. Under the parole system, the prison officials are permitted to release offenders even before their minimum terms have expired, if they feel that a real reformation has taken place. The prisoner gives his promise to behave in future. If he violates this promise, he may be brought back to finish his term. A special board of officials is usually given power to grant releases on parole. Still another notable improve-

ment in correctional procedure is known as the probation system. It has greatly reduced the number of persons who are actually sent to prison. Probation is usually confined to first offences, where the crime is not a very serious one. When an accused person pleads guilty to a first offence, or is convicted, the courts are empowered to place the offender on probation for a definite period. This means that instead of being sent to jail he is placed under supervision of the probation officer who is attached to the court.

The problem of law enforcement. The problem of enforcing the state laws, especially the criminal laws, is one of the most difficult problems with which we have to contend at the present day. Lawlessness seems to be more widespread in the United States than in any other civilized country. It has greatly increased during the last dozen years. More than half a million persons are sent to jail or reformatories in the United States every year. The number of those who are let off with the payment of a fine or placed on probation is much larger. Many reasons account for the large ratio of crimes in America. Perhaps the most important is the relative ease with which an offender can escape the consequences of his offence. The criminal laws are full of loopholes and the courts afford the criminal numerous opportunities for delay or evasion. In our endeavor to protect the rights of the well-behaved citizen, we have given the criminal far more leniency than he deserves. He is permitted to delay his trial by resort to all manner of technicalities, and if he is convicted, he may carry an appeal to the higher courts. By hook or by crook it is usually possible for any shrewd criminal to delay his punishment for many months and sometimes to escape it altogether. The growth of large cities has also tended to

increase the amount of lawlessness. In proportion to population, crimes are much more numerous in cities than in rural districts. The temptations to crime are also greater in the cities, and the opportunities to escape arrest are much better. In cities, moreover, the police forces are often less vigilant in the detection of crime than they ought to be. Something must also be attributed to the newspapers, which sometimes make popular heroes out of those who commit even the most atrocious crimes.

Care of the feeble-minded and insane. The term insanity is used to cover a wide variety of mental defects, but a distinction should be made between persons who are merely feeble-minded and those who are afflicted with violent mental diseases. The former are usually harmless, but unable to learn much or to make their own way in the world. Fifty years ago there were only about forty thousand persons in all the institutions for the insane maintained by the various states. To-day this number has increased to almost half a million and is steadily growing. The cost of maintaining this great body of mentally defective persons is enormous. It forms a considerable factor in the annual state tax rate. Inasmuch as mental defectiveness is largely the result of heredity, there would seem to be but one way of preventing a further increase in the population of these institutions; namely, by preventing the marriage of all persons who are not of normal mentality. Some of the states have already taken measures in this direction.

Public works. Every state government undertakes various public works for the benefit of the entire state. These are intended to supplement the work of the counties, cities, towns, and townships. More particularly, all the

states are engaged in the building of state highways. In general it is the practice to permit the municipalities to lay out, to construct, and to maintain the minor thoroughfares, while the state authorities undertake the construction of trunk roadways; that is, roadways which serve as main arteries of traffic. In some cases these state roads are financed by the issue of bonds, but to a considerable extent the cost is defrayed by the proceeds of a gasoline tax which is now levied by practically all the states upon the sale of gasoline for use in motor cars. This tax, which amounts to two or three cents per gallon, yields a large revenue every year. The national government is also assisting the states in the construction of trunk highways by bearing half the cost in certain cases.

The state governments also undertake the construction and maintenance of certain bridges, especially in the case of bridges which connect one state with another state. Along the Atlantic and Pacific seaboard the various states have also expended considerable sums of money in the improvement of harbors and in the erection of aids to navigation. Many of the western states have created large reservations of park land for public use. Some of them have engaged in great irrigation projects; others, again, are carrying on the reforestation of state lands.

Control of state banks. State legislatures have the right to charter banks and all of them have done so. These state banks, or trust companies, are under the supervision of an official who is usually known as the bank commissioner. He is customarily appointed by the governor, but in a few western states he is elected by popular vote. The function of the bank commissioner is to keep close watch on the business of state banks in order to prevent

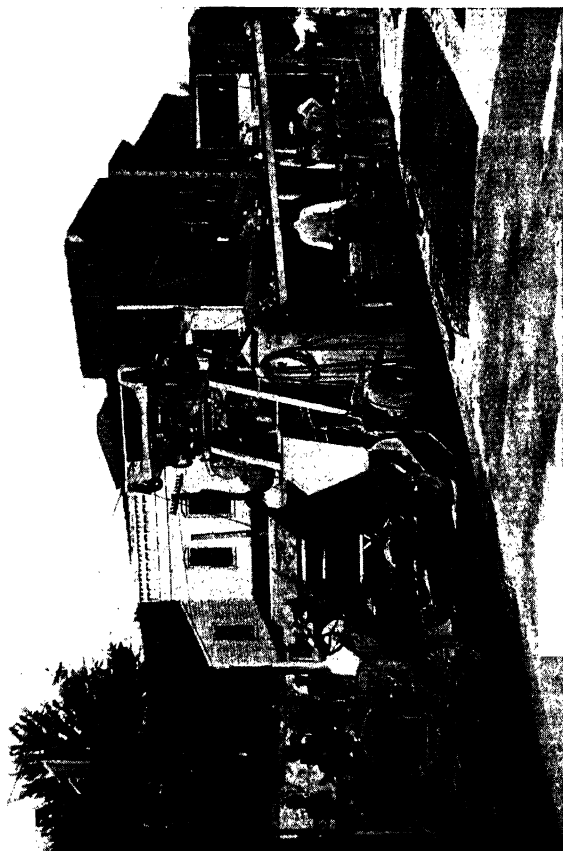


Photo by Ewing Galloway, N. Y.

BUILDING A MODERN HIGHWAY OF CONCRETE

violations of the banking laws and to afford a measure of protection to depositors. A few states guarantee the safety of deposits. They require every bank to make contributions to a general fund which can be drawn upon to pay the depositors if any bank fails. Inspectors go over the books of each state bank from time to time and make sure that they are properly kept, that funds are safely invested, and that the banking laws are being observed. To carry out his functions the bank commissioner is assisted by a staff of assistants.

Supervision of insurance companies and various other corporations. The same sort of supervision is exercised by the state over the business of insurance companies. This work is ordinarily entrusted to a state official known as the superintendent of insurance. State supervision over business corporations other than banks and insurance companies is not so rigid, but it is increasing in strictness. In some cases it has been extended to building and loan associations, stock and bond brokers, and even to real estate agents. Business corporations of every variety receive their charters from the state. Sometimes these charters are issued through the office of the state commissioner of corporations, but more commonly the work is done in the office of the secretary of state. After a corporation receives its charter, it is required to make an annual report of its affairs to the state authorities. If it fails to do this, the charter may be withdrawn. During the past twenty years many of the states have endeavored to prevent the sale of shares in corporations which are fraudulent or likely to cause loss to the investing public. This has been done by the passage of what are commonly known as *blue sky laws*. Such laws usually require that every corporation which

undertakes to sell stock to the public shall permit itself to be investigated by the state authorities before any such stock is sold. These authorities, if they find that all the legal requirements have not been complied with, are empowered to prohibit the sale of stock.

Regulation of public utilities. All railroads and public utilities which do business in more than a single state are under the jurisdiction of the national government. Their rates and conditions of service are supervised by the Interstate Commerce Commission. But there are many public utilities including street railways, motor-bus lines, gas plants, and electric-lighting companies, which confine their operations to a single state. The rates charged by such public utilities and the conditions under which they render service to the public are under the supervision of the state authorities. For the exercise of such supervision, most of the states maintain boards which are known as railway commissions or public service commissions. The members of these boards are usually appointed by the governor. They are empowered to adjust all matters in dispute between public service companies and the public. Before a gas company can change the quality of gas that it supplies, for instance, it must obtain the approval of the state authorities. Before a street railway can abolish any part of its lines, it must have similar approval. Before an electric-lighting company can revise its schedule of rates, it must convince the state authorities that the new charges are reasonable. Public utilities, as a rule, get their franchises from the local authorities; that is, from city councils, or town trustees, or county commissioners. A franchise is a general permit authorizing the company to use the public roads or streets for its gas mains, tracks, or poles. It

usually runs for a long term of years. But although the local government gives the franchise, the state authorities provide the supervision—chiefly because most companies operate in more than one municipality.

Why such regulation is needed. One may ask why public utilities such as street railways, gas plants, and electric-lighting plants, should be thus closely supervised by the state when other forms of business enterprise are not so closely controlled. The rates charged by coal companies or oil companies, for example, are not subject to such strict regulation. The conditions under which the butcher and the baker furnish their goods to the public are not regulated in detail by any state board. The reason for this discrimination is to be found in the fact that all public utilities use public property. The street railway runs its tracks on the public roadways; the gas company lays its mains beneath the public streets; and the electric-lighting companies place their conduits in or erect their poles on land which is owned by the public. In this respect they differ from other business enterprises, such as factories and stores, which do not require special privileges in the public streets. Public utilities ask for special privileges and are therefore placed under special obligations in return.

Public utilities differ from ordinary business in another respect. In all ordinary lines of business there is competition, and this competition protects the public against excessive rates or prices. The existence of competition also assures good service. If you do not like the prices and service in one store you patronize another. But in the case of public utilities, all competition is virtually eliminated. You cannot choose to buy your electricity from

one company rather than from another. It is not practicable to have two street railways competing on the same street, or two gas companies, or two telephone companies engaged in competition within the same area. That would mean a duplication of plant which would not only increase the expense but involve great inconvenience to the public. Public utilities are natural monopolies, in other words, they are monopolies by the very nature of things. Being natural monopolies, without the possibility of competition, they cannot be permitted to do as they please. It is essential that they be made subject to regulation in the public interest.

Supervision of local government. Not all the functions that come within the jurisdiction of the state authorities are actually performed by them. Every state is divided into subordinate political divisions such as counties, cities, boroughs, towns, townships, and incorporated districts. These are called areas of local government. They are created and maintained in order that the various functions of the state may be more easily performed. Cities, counties, towns, and townships are merely the agents of the state. They derive their very existence and all their powers from the state. True enough they are given a large amount of independence, but their work is always subject to state supervision. Counties are governed under the provisions of state law. Cities obtain their charters by action of the state legislature, even though in some cases they are permitted to frame such charters themselves. In many cases the state constitution restricts the freedom of the legislature to interfere in matters of local government and thus guarantees municipal home rule. But home rule does not mean complete independence, and the legislatures still exercise a

large degree of control over local revenues, local expenditures, schools, police, fire prevention, municipal elections, traffic, the taking of land for public improvements, sanitation, water supply, and many other matters. Thus local government and local administration are in reality branches of the state government, established and regulated by the state constitution and laws.

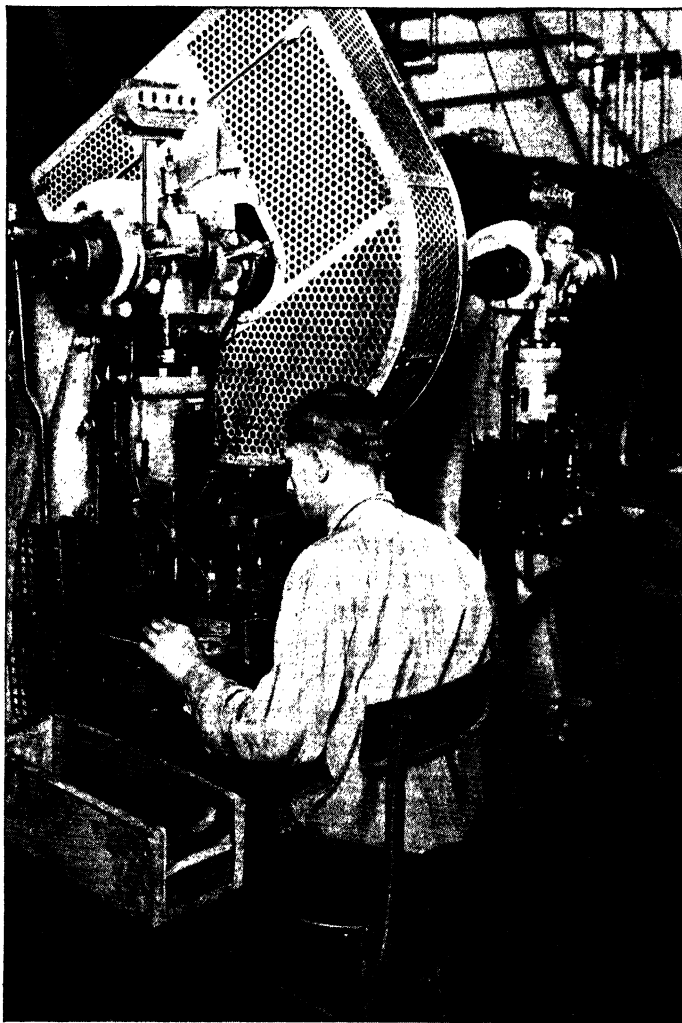
Public education. The Constitution of the United States gives the Federal government no power to control education in the various states. The responsibility for establishing and maintaining a system of public schools rests with the various state governments. Every state of the union has established, therefore, a system of free public education and has created a state department of education or of public instruction to supervise its educational system. The immediate function of managing the public schools is vested in the hands of local school boards and school superintendents, but a broad measure of general supervision is exercised over them by the state authorities. The strictness of this supervision varies greatly from one state to another. In some states the whole educational policy is directed by the state department of education; in others a large amount of discretion is left to the school officials of the cities or districts, while the state department of education exercises little more than advisory jurisdiction.

How education is supervised by the state. The state department of education usually consists of a board with a state superintendent. These officials are either appointed by the governor or, in some cases, elected by the voters of the state. The jurisdiction of these authorities includes the elementary schools, the junior high schools, the regular high schools, the junior colleges, and the normal schools or

teachers' colleges; but it does not usually include the management of the state university when there is one. The supervision of the state university is ordinarily entrusted to a separate board, commonly known as a *board of regents*. In addition to a regular state university, many of the states maintain agricultural and mechanical colleges. The cost of the whole educational system is defrayed in part by taxes levied in the counties, cities, or school districts, and in part by appropriations from the state treasury.

Regulation of the professions. Admission to most of the professions, such as law, medicine, architecture, and dentistry, is now regulated by the provisions of state law. These regulations are enforced by various state boards. In order to become a lawyer or physician, one must first pursue a regular course of study as laid down by the statutes. Then, in most of the states, it is necessary to pass a special examination which is conducted by the state board of law examiners or by the state medical board, as the case may be. These requirements are imposed in order that the standards of the various professions shall be kept up and proper protection given to the public against inferior service. In recent years the supervision of the state has also been extended to various vocations which are not commonly known as professions—for example, to insurance agents, real-estate agents, plumbers, barbers, etc., who are now required in many of the states to obtain licenses before engaging in their respective lines of business.

The encouragement of agriculture. The encouragement of agriculture is a field in which both the national and the state governments are interested. The national government, as has been seen, maintains a regular Department of Agriculture and performs great services in the



"SAFETY FIRST"

How a workman is protected against accident. A dial-feed power press in the factory of the Kolster Radio Corporation

way of agricultural promotion. But its authority in this respect is by no means exclusive; on the contrary it is shared by all the states. Nearly all of the latter now maintain institutions for the giving of agricultural education and in addition most of them have agricultural experiment stations. By the holding of annual state fairs and occasionally by giving aid to county fairs, the states have also tried to promote the interests of agriculture within their own borders. Those states which have a special interest in certain branches of agriculture, such as cotton raising or citrus growing, have established research institutions which devote themselves to experimentation in such special fields.

The regulation of industry. Congress controls the shipment of industrial products from state to state; but the conditions under which industry may be carried on are subject to control and regulation by the laws of the states, even when the products of such industry are to be marketed in other states. The state legislatures have authority to regulate the conditions of labor in industry, more particularly the labor of women and children. They may fix the maximum hours of labor for women and children, and for persons employed in dangerous trades, and have done so in nearly all the states. They have the right to make regulations for the protection of the workers against accident and for the protection of their health. But they have no right to restrict the right to labor on the part of able-bodied men who are engaged in ordinary occupations not affected by a public interest. To do this is to restrict the freedom of the individual unreasonably.

Workmen's compensation. Most of the state legislatures have enacted workmen's compensation laws which

provide a means of supporting the worker during the period in which he may be laid off by reason of accident, even when such accident is due to his own negligence. The compensation is paid either by insurance companies or by the state assurance department from premiums which the employers pay each year. The amount is determined by a workmen's compensation board. Nearly all the states, moreover, have elaborate codes of factory laws which relate to the sanitation, ventilation, and other physical conditions in places where large numbers of workmen are employed. The enforcement of these regulations is usually committed to a special state board or department. For the adjustment of disputes between employers and workers, there are boards of arbitration or conciliation in many of the states. These boards, as a rule, have no mandatory powers; they merely endeavor to adjust difficulties when controversies arise.

State finance. For the performance of these various functions, the state requires considerable sums of money every year. They obtain this money from several sources. One of the most common and most profitable sources of state revenue is a tax on business corporations. The basis of this tax varies among the different states. In some it is levied upon the net profits of the corporation for the year; in others upon its capital stock, and in still others upon its volume of business. Some of the states have an income tax which is levied annually upon the net income of individual citizens. Virtually all of the states have made provision for an inheritance tax; that is to say, a tax levied upon the estates of deceased persons resident within the state. Special taxes are levied by some of the states on

the business of public utilities. The gasoline tax has already been mentioned.

Direct and indirect taxation. But the states as a rule do not levy taxes upon lands and buildings, or upon personal property (that is, furniture, machinery, stock-on-hand, etc.). This field of taxation is customarily left to the political subdivisions; that is, to the county, city, or town. In some cases, however, the state authorities require that the municipalities shall incorporate in their annual tax levies a certain rate for the benefit of the state treasury. In other words, the municipalities levy their own tax rate upon real estate and in addition collect a certain amount which they pay over to the state. Indirectly, therefore, some of the states do impose direct taxes upon land and buildings. These taxes go into the state treasury and the legislature then appropriates various sums for the work which the state has to do for the people—for law enforcement, public works, education, and all the rest. These appropriations are usually made by a general law known as the *budget*. Nothing can be spent from the state treasury unless it is authorized by action of the state legislature.

State bond issues. But not all the expenditure of the state comes out of taxation. Public works such as state highways, bridges, and state buildings are often built on borrowed money. The state issues bonds for a term of years and with the proceeds from the sale of these bonds defrays the cost of various public improvements. The interest on such bonds and the sums required for repayment of the borrowed money are obtained from the proceeds of taxation. Nearly all the states have indebtedness

which has been created in this way. If the money is needed for a short time only, it can be borrowed from the banks; ~~but~~ if the funds are required for a longer period the usual plan is to issue sinking-fund bonds or serial bonds. In the former case a sinking fund is established when the bonds are issued and each year a certain installment is paid into this fund so that enough will be available to redeem the bonds when they become due. A newer and better plan, however, is to issue the bonds in such form that they will become due serially, that is, one or more bonds maturing in each successive year of the loan period. This latter plan is now the one more commonly used.

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QUESTIONS ON THE TEXT

1. Why is the work of the state government important? Why does it get less public attention than that of the national government?
2. What is civil law? Criminal law? A code? Common law? Statutory law?

3. Does your state have a civil and a criminal code? A code of procedure? Any other codes? What is the advantage of codifying the law?

4. Is there any distinction between a prison and a house of correction? If so, what is it?

5. Should prisoners be kept at useful employment? Should goods made by prison labor be put on the market in competition with the products of regular industries? If not, how can prisoners be employed?

6. What is an indeterminate sentence? What are its advantages and disadvantages?

7. What is the parole system? Is it a good system? Why?

8. Should prisoners be paid for their work while in jail and the money given to their families? Explain.

9. Would it be better to pass fewer laws and enforce them? How can it be done?

10. What is the cause of lawlessness in the United States? Suggest a remedy for it.

11. Should all persons be required to present evidence that they are mentally competent before being granted a license to marry?

12. What public works does the state generally undertake? Is it right for states to impose a gasoline tax? Is this a good kind of tax or is it a "nuisance tax"?

13. What supervision does your state have over state banks within its jurisdiction? How is this control exercised?

14. What is a bank examiner? A bank commissioner? Should a state guarantee the safety of deposits? Why?

15. Over what companies and corporations does your state exercise supervision? What is a superintendent of insurance? What does a state charter require a corporation to do? What is the penalty for not doing it? What are "blue sky laws"? Why is it necessary to have them?

16. What is a public utility? How are public utilities regulated in your state? What are the duties of a public utilities board? Why is such regulation necessary?

17. Do you live in a *home-rule* state? How much supervision does your state exercise over local government? Make a list of the things which cities and counties cannot do at their own discretion.

18. Why are the states allowed to control education? Should there be more (or less) local freedom in managing the schools? Why? What professions and vocations ought to be licensed?

19. In what ways do the states try to encourage agriculture? To what extent do they regulate industry? Do they have control over the manufacture of their own products when marketed in other states? What restrictions on labor are the states unable to impose? Do you favor this restriction? Why?

20. What are the usual provisions of a workmen's compensation act? Do all states have such laws?

21. May the boards of arbitration and conciliation in the various states compel disputes to be arbitrated? May they enforce their decisions? Explain.

22. From what sources does a state get its income? Should it tax real estate?

23. Should the national, state, and local governments use the same sources of taxation?

24. What are state bonds? Why are they issued? How are they paid off?

TOPICS FOR ESSAYS

1. Are We a Lawless People? 2. The States as Agents of the Nation. 3. Public Utilities Commissions. 4. State Supervision of Local Schools. 5. The Regulation of the Learned Professions. 6. The Regulation of Vocations Which are Vested with a Public Interest. 7. State Encouragement of Agriculture. 8. State Regulation of Industry. 9. Child Labor Laws. 10. Minimum Wage Laws. 11. Workmen's Compensation Laws. 12. Factory Inspection Laws. 13. Boards of Arbitration and Conciliation. 14. The Kansas Experiment in Compulsory Arbitration. 15. The Baumes Law in New York State. 16. State Income Tax Systems. 17. The Need for Uniform Divorce Laws. 18. State Law Codes. 19. The Reform of Prison Methods. 20. The Problem of Law Enforcement. 21. Extra-judicial Law Enforcement: Lynch Law, the Vigilantes, the Ku Klux Klan.

22. The Care of Defectives and Delinquents. 23. National Aid to State Highway Programs. 24. The Gasoline Tax: Its Merits and Defects. 25. State Indebtedness.

SUBJECTS FOR DEBATE

RESOLVED:

1. That education should be under national supervision rather than under that of the states.
2. That capital punishment should be abolished.
3. That the parole system encourages rather than discourages crime.
4. That every state should guarantee deposits made in state banks under its jurisdiction.
5. That there should be compulsory arbitration of all labor disputes.

CHAPTER XXIII

CURRENT PROBLEMS OF STATE GOVERNMENT

1. It has been suggested that each state ought to have a constitution and an administrative code. The constitution should confine itself to the fundamentals of government and the safeguarding of popular liberties, leaving out all details as to duties of officers and methods of conducting business. It would then be a short and simple document. The administrative code should be used to incorporate all the nonfundamental provisions which are now being put into the state constitutions, and it should be subject to change at any time by a two-thirds vote of the legislature. This would do away with the frequent amending of the constitution. Would you favor such a proposal?
2. The states are equally represented in the Senate of the United States. In some states there is a provision for the equal representation of counties in the state senate, even when these counties are widely apart in population. Can it be argued that the reasons are as good in one case as in the other? Justify your answer.
3. In some of the states there is a wide divergence of interest between the largest city and the rest of the state—for example, in New York and Illinois. The big cities complain that they are not fairly treated by the state legislature. It has been suggested that the largest cities might be made states of the Union, *city-states* as it were, and their municipal government could then be abolished. New York City, if made a state, would be one of the most populous. What do you think of this suggestion?
4. Ought the national Constitution to contain a clause reserving to the states some definite sources of revenue, such as taxes on inheritances or on incomes or on corporations? Why?

Influence of the national system on the states. Any-one who studies our system of state government must be

impressed by the closeness with which it is modeled upon the government of the nation. The national government, at the time when it was framed, drew some of its features from the then-existing state governments, but this indebtedness has been fully repaid by the even larger extent to which the states have borrowed ideas and methods from the nation during the past hundred years. It is not too much to say that the state governments are now for the most part mere reproductions of the national government on a smaller scale.

Note how many features are alike. Each state has a written constitution, including a bill of rights, which is the basis of its government. Each state has its governor, who occupies a position roughly corresponding to that of the President. Each state has its administrative departments and the heads of these departments, in some cases, form a governor's cabinet. Each state has a two-house legislature; the upper chamber is known as the senate and the lower branch is usually designated as the state house of representatives. Each state has a system of courts with a supreme court at the apex. Finally the government of each state is based on the principle of checks and balances.

In a word, the states have adopted for themselves nearly all the machinery which the nation uses for the rulership of more than one hundred million people. It matters not whether the state is big or little, the amount of political machinery is the same. Nevada, for example, has less than one hundred thousand people, while New York has more than ten million. But Nevada, nevertheless, has its constitution, bill of rights, governor, lieutenant governor, heads of departments, senate, assembly, complete judiciary, and all the rest. There are cities with much

larger populations which have more governmental work to do, and spend more money, but which get along with five councilmen and a city manager.

Has this influence been beneficial? One may well raise the question whether this policy of modeling our state governments upon the pattern of the nation has been wise. The national government was devised for the purpose of dealing with certain general governmental problems, such as the maintenance of an army and navy, the regulation of interstate commerce, the negotiation of treaties, the conduct of foreign affairs, and the maintenance of a postal system. The work of the state governments is altogether different. It is concerned mainly with the administration of the civil and criminal laws, the control of education, the care of public health, and the supervision of local government. There would seem to be no good reason why both classes of problems should be handled by exactly the same machinery. Much of the work now carried on by the state is business, not government, and our scheme of state government is too complicated for work of the latter type. Hence there is a widespread feeling that it ought to be simplified and adapted more closely to the business functions which are becoming more important in state government year by year. But the difficulty is to decide just where to begin.

State rights and national powers. The national government possesses only such powers as are granted to it by the Constitution of the United States. All other powers are expressly reserved to the states and to the people. It was anticipated that this reservation of all new powers would in time raise the states to a position of great importance, because every new governmental enterprise would fall to the states and would not be controlled by Congress. In

the nature of things it was felt that the powers of the national government, being fixed and definite, would not develop to any great extent, while those of the states, being residual, would keep on steadily expanding. But that is not what has happened. The powers of the national government have grown more rapidly than the authority of the states. Many new functions, not mentioned in the Constitution at all, have been assumed by Congress under a broad interpretation which the courts have upheld.

Some examples. The makers of the national Constitution assumed, for example, that the state militia would never be used outside the borders of the United States, as the words of the Constitution clearly imply. But in 1916 Congress demonstrated its ability to change this situation by the National Defence Act, which provides that the organized state militia may at any time be bodily transferred into the regular army of the United States. Thereupon it ceases to be state militia and becomes available for foreign service.

Again, it was assumed that the several states would have full control of public education within their own boundaries, for the Constitution of the United States contains not a word about education or schools. But the national government has long maintained a Bureau of Education and there are proposals to expand this bureau into a regular Department of Education like the Department of State or the War Department. The national government already exerts a very considerable influence upon the educational system of the various states by means of annual grants for vocational education. It also has a share in the control of road building within the several states through similar grants.

Or take the radio. It is a new thing, and as such it might be assumed that the states would regulate broadcasting stations, but they do not. The national government has taken control. In many other ways it has been gradually trenching upon what were originally known as state rights. This is a natural development, because the problems of government have now become so far-reaching that the states alone cannot cope with them. They must be dealt with by the national government or not dealt with at all. The people, when they realize that a problem has got beyond the power of the individual states, are inclined to insist that the national government shall take hold of it, no matter what the Constitution provides. Hence the words of the Constitution are being gradually stretched to cover these new problems as they arise. This means that the powers of Congress have been expanding at a rapid rate while those of the state legislatures have been hardly growing at all.

Improving our state constitutions. A hundred years ago most of the states had short and simple constitutions. They merely outlined the frame of government and contained a few guarantees for the liberty of the individual citizen. But state constitutions have ceased to be either short or simple. From time to time, in almost every state there have been revisions of the constitution, and with every revision there has come an increase in length and complexity. Most state constitutions are easy to change. A majority vote of the people is usually all that is needed. This process of alteration is so easy that amendments are added almost every year. Sometimes as many as a dozen proposed changes appear on the ballot at a single state election. Things are put into the state constitution one

year and taken out the next. Details of governmental organization and even the salaries of officials are often inserted in the constitution. Limitations and restrictions of every sort are crowded into these documents, year by year, until the legislature, the governor, and the administrative departments find themselves without sufficient elbow room for the satisfactory performance of their respective duties. Many things are being put into state constitutions which ought to be dealt with by law and not by constitutional amendment. The original constitution of Virginia occupied only six and a half pages; the latest constitution of Oklahoma occupies a hundred pages, a large part of which are devoted to the regulation of corporations, banks, and insurance, the employment of children, and the control of the public schools.

The way to do it. The makers of state constitutions should return to the true purpose and proper scope of a constitution, which is to set forth the principles of government, not to usurp the functions of a legislature. Neither the liberty of the individual nor the general welfare of the people has been served by the expansion of these documents to their present size. A state constitution should deal with the fundamental things and leave all the details of government to be arranged by the legislature. It will be replied, of course, that legislatures cannot be trusted to supply these details properly. If that be the case, the remedy is to improve the legislatures rather than to make a mess of the constitutions. State constitutions are too easy to change. In some states the constitution can be as easily altered as the laws. When that is the case, a constitution loses the chief reason for its existence, which is to prevent the improper use of legislative power.

Increasing the powers of the governor. The authority of the governor was originally of rather small importance. In the earliest state constitutions he was not given the right to veto acts of the legislature or to make appointments, or to control in any way the appropriation of public money. Apparently it was intended that the governor should be a good deal of a figurehead, and that the legislature should be the chief controlling branch of the state government, as it is in England. Gradually, however, this situation has been undergoing a change. Everywhere the office of the governor has been steadily increasing its power and influence. To-day the governor has the right to veto acts of legislature, and in most of the states he uses this power freely. In some states he may veto individual items in a bill, letting the rest go through. Under ordinary circumstances it is found impossible for both houses of the state legislature to pass laws over his veto. This is especially true when the governor vetoes some item in an appropriation bill.

Again, in nearly all the states the governor has power to appoint most of the important state officials and the members of various state commissions. He is commander-in-chief of the state militia and exercises the power of pardon. Very often he is the recognized leader of the political party which controls the state government. In some cases he has been entrusted with the making of the annual state budget. He recommends to the legislature the passage of laws and these recommendations nearly always carry a great deal of weight. From every point of view the governor has become a dominant figure in state government and his authority is still growing year by year. A few years ago a book appeared with the title *Our Amer-*

ican Kings. It contained biographical sketches of various governors who had dominated the governments of their respective states. The author showed that these governors had exercised more real power than the kings of European countries such as Denmark, Belgium, or Bulgaria.

The declining power of state legislatures. On the other hand, our state legislatures have been declining in power and prestige. Their freedom of action has been greatly limited by the provisions of the state constitutions. Legislatures are forbidden to sit for more than so many days, or to interfere with city charters, or to levy certain taxes; in some cases even their own rules of procedure are laid down for them by the state constitution. By means of the initiative and referendum it is possible in many of the states to enact laws without the intervention of the state legislature at all. Some of the most important state laws are adopted in this way. Thus the original balance of power between the executive and legislative branches of state government has been disturbed, and we have probably not reached the end of this development.

Will it continue? Naturally such a situation suggests the query as to whether this continued growth in the powers of the state executive is desirable. Shall we have at some future time a condition of affairs similar to that which now exists in many of the larger cities, where the preponderance of power is vested in the hands of the mayor while the city council has been reduced to an almost negligible place in the mechanism of city government? Whether desirable or not, we seem to be proceeding in that direction. The state legislature with its two chambers is a cumbrous body. Its procedure is so complicated that it takes a long time to get things done. And when there

is delay or failure, the responsibility is hard to place. The people desire to have power lodged where they can blame somebody when things go wrong. Hence they look to the governor for leadership and for action. They believe that when they give him new powers they thereby concentrate responsibility.

The consolidation of state administrative departments. One of the most urgent needs in state government to-day is for an improvement in the machinery by which the vast and varied administrative work is being carried on. In every state there is a considerable number of administrative departments, bureaus, divisions, boards and commissions. Some heads of departments are directly elected by the people, some are appointed by the governor, and a few are chosen by the legislature itself. Members of boards and commissions are selected in a similar variety of ways. There is no concentration of responsibility as in the national government where every branch of the administration is directly responsible to the President. This administrative mechanism has moreover been built up without any plan or set purpose. Year by year the state legislature authorizes the creation of some new administrative department with little reference to what is already in existence. The powers of these various departments are often ill defined and their functions sometimes overlap. The result has been a good deal of friction and working at cross purposes.

Why this problem is difficult. The simplification of this administrative machinery and the consolidation of departments have been recommended by governors in all parts of the country during the last dozen years. State legislatures have responded by appointing committees to

study the question, but in only a few cases has any action resulted. One reason for this may be found in the fact that projects of administrative reform almost always require changes in the state constitution; or, indeed, a general overhauling of that constitution. Opposition, moreover, is bound to come from the heads of the departments concerned. They fear that any consolidation would put them out of office. Finally, all proposals to simplify the machinery of state government are bound to meet with the opposition of the party machines, which dislike to see their patronage reduced. Nevertheless, several states, during the past ten years, have made progress in reducing the number of their elective offices. Illinois is a good example. The people of that state now elect, in addition to the members of the legislature, eight state-wide officers only. All others are appointed. This means that the voters of Illinois are enabled to concentrate their attention upon a few outstanding officeholders; namely, the ones which exercise an ultimate control over the course of governmental policy. New Jersey has gone even further. In that state the people elect a governor and no other executive officials. All heads of departments are appointed by the governor.

A popular objection. The objection is often raised that when you make an office appointive, you take it away from the people. Democracy and the election of executive officials are thought to be inseparable. Hence politicians usually raise a protest whenever it is proposed to make any elective office appointive. They decry it as undemocratic but the objection will not stand analysis. No office is ever taken away from the people so long as they control the appointing authority. The stockholders of a bank do not

lose control when they allow the manager to appoint the cashier. Nor do the people lose control of the public utilities commission in any state when they authorize the governor to appoint its members, for the governor is himself the people's choice and the people's servant. A governor who did not so regard himself would never get a second term.

A lesson from Washington. Here is a feature of state government in which the national pattern might well be followed. At Washington the responsibility for all administration is completely centralized. Congress determines the nation's policy. But the President, through his appointive officers, is responsible for carrying it into effect. If the voter does not like the way in which things are being done in the office of the postmaster-general, he knows where to put the blame. The President is clearly accountable when things go wrong in any department of the national government, for it is he who appoints the higher officers and they in turn control their subordinates. There are only ten regular departments in the national administration, whereas in the states there are fifty, sixty, or even more. Would it not be a good plan to pursue the same course in state government both as to directness of responsibility and reduction of departments? Let the people of the state choose their governor as the people of the nation choose their president; then provide that all administrative officials of state government shall be appointed by the governor, with the consent of the state senate, and be removable by the governor at will. This would make him fully and definitely responsible for the entire work of state administration. At present the responsibility is scattered. The ordinary man does not understand his own state

government because it is too complicated. The tangled mass of officials, boards, and commissions is a puzzle to him. He often sees money being wasted and work badly done, but he does not know just where to place the blame.

An improved budget system. A budget is a plan of public finance for the coming year. It is an estimate of probable income and probable expenditure, based on the principle that such estimates should be made before money is spent. Yet although this is a sound principle of government, it was not so regarded by most of the state legislatures until comparatively recent times. Many of them conducted their affairs throughout the nineteenth century without a budget system. During the past twenty years, however, the situation has been undergoing a change and to-day nearly all the states have adopted a regular budgetary procedure. At a given date once a year, a call is sent to all the heads of departments asking them to make an estimate of their probable financial needs for the ensuing twelve months. These estimates are based on the actual expenditures of the preceding year. Similarly, the state financial authorities make a forecast of the probable income from varied sources, including taxation at existing rate. Then, when all the estimates have come in, they are compiled into a single document, duly revised, and submitted to the legislature for adoption.

The governor's veto in relation to the budget. Finally, the appropriations go before the governor for his signature. In some states he is permitted to strike out or reduce any item, subject to a substitution or restoration of the figures by a two-thirds vote of the legislature. In other states he is restricted to the option of accepting or rejecting the measure as a whole. Many improvements in this budgetary

procedure remain to be made. In general the tendency is to give the governor a larger share in the pruning of the estimates before they are transmitted to the legislature. The policy of permitting him to reduce or strike out items in the budget when it comes to him for signature is also a wise one and conduces to economy of state administration.

The reduction of the state legislature to a single chamber. All state legislatures are made up of two chambers, principally as a matter of custom. Originally some of the state legislatures had a single chamber only, but after the adoption of the national constitution it was felt that the bicameral system ought to be used. The dual-chamber plan is usually defended on the ground that it prevents hasty and ill-considered legislation. One chamber acts as a check upon the other and thereby protects the people against rash action on the part of their representatives. There is some force in this argument, but on the other hand the bicameral system is a disadvantage in various other ways. The members of both branches of state legislature are elected by the same body of voters, and hence are likely to represent the same point of view. If a state is overwhelmingly Democratic or Republican, that political party is altogether likely to have a strong majority in both chambers. Both chambers will then be dominated by the same party leaders or controlled by the same political machine. In such case one is not an effective check upon the other. A single chamber would do just as well.

Objections to this proposal. On the other hand, if each chamber is dominated by a different political party, the checking process becomes altogether too effective. One chamber rejects what the other enacts and hence a deadlock ensues. To put it in another way, the system either

fails of its purpose altogether or fulfils its purpose in an extreme way. Furthermore, the dual-chamber system means a slowing up in the process of legislation. It means that any proposed measure must work its way through both houses; it must go before a committee in each branch, must be read and passed three times, and the two chambers must agree upon every word in the bill before it can go to the governor for his signature. This greatly increases the opportunities for obstruction on the part of those who oppose the measure, even though it be favored by public opinion. The bicameral system divides responsibility and makes it difficult for the people to place the blame when popular measures are defeated.

Commission government for the states. It has been suggested that the two-chamber system should be abolished in state government and the entire legislative function committed to a single house. The membership of this single chamber would be small, not exceeding seven or nine, and the members would be elected at large by the voters of the whole state, just as United States senators are now chosen. They might be elected on a basis of proportional representation (see p. 92) thus giving the minority party a fair quota. Each member of the single chamber might also serve as the head of a state department or group of departments. For example, one would have charge of public works, another of finance, another of health, and so on. Thus the separation of legislative and executive power would be abolished. The two would be unified.

Those who advocate such a change point to the fact that some counties having a million or more people are governed by a single small board of county commissioners.

They call attention to the further fact that our largest cities now have a single-chamber council. Philadelphia, Chicago, Detroit, Cleveland, Los Angeles, and other great centers of population manage to get along with a single legislative organ, although their populations are larger than in some of the states and their annual expenditures much greater. In these cities the veto power of the mayor is regarded as a sufficient check upon hasty action by the city council.

Rural *versus* urban representatives in state legislatures.

One effect of the double-chamber system in state legislatures is to promote discrimination against the large cities. In most of the states it is provided that state senators and assemblymen shall be elected by counties, but with a provision that at least one senator shall be chosen from every county, however small its population, and that no county shall have more than a designated number of state senators even though its population would warrant a much larger quota. The argument is that no part of the state ought to be allowed to gain control over the whole state government, which it would do if it contained more than half the population. New York City, for example, contains more than half the people of New York State. If representation at Albany were placed strictly upon a population basis, the metropolis would control both branches of the state legislature. Hence it is provided in the New York state constitution that no county shall have more than one third of all the state senators and that no two adjoining counties shall have more than one half. In Maryland, to take another example, the city and county of Baltimore contain about half the population of the state, but in the Maryland legislature this city and county are allowed less than one

fourth of the members. In Connecticut the senators are appointed according to population, while the lower house represents the towns without regard to size.

Reason for the discrimination against the large cities.

The chief reason for this underrepresentation of the more populous cities of the state is to be found in the conflict between urban and rural districts. A generation ago the rural districts contained a majority of the people in practically all the states, and thereby controlled the state legislatures in both branches. But the cities have been rapidly growing, and in some states the majority of the people are to-day concentrated in a few large industrial communities. As a result of this, the cities would dominate the legislature if they were given representation according to numbers. The rural districts are bitterly opposed to any such control and they have endeavored to prevent it. The rural population is inclined to distrust the large city and to regard it as a corrupting factor in state politics. There is a widespread conviction in country districts that large cities are controlled by bosses, rings, and corporations. Hence the constitution makers have tried to keep the cities from getting the upper hand in politics. Their chief device has been the one just described, namely, the limitation of the number of members which any single county or city may elect to the state legislature. As a result of their work, the ballot of an upstate farmer may in reality count for twice as much as that of a worker in a large community.

Improving the quality of state laws. The work of drafting a law is one that requires both technical skill and experience. When a law is well drafted, its provisions are arranged in an orderly way; they are clearly worded, free from ambiguity, and stated as concisely as is practicable.

They should not be in conflict with the provisions of the state constitution and should be phrased in such way as not to repeal, unintentionally, any laws that are already in force. When all these requirements are borne in mind it will be seen that the task of drafting perfect laws is one that requires a practiced hand. It is something that cannot be done by amateurs who have had no training for the work.

Amateur lawmaking. Nevertheless, most of our laws have been framed by amateurs. It is only within the last twenty years that law drafting has come to be recognized as an art for the professional. Prior to that time any citizen felt himself competent to draft a bill. Then he would ask his local senator or assemblyman to introduce it in the legislature. The latter would merely put it on the clerk's desk without even reading it. Then the bill would be referred to a committee, and if there was no opposition, it might go through the legislature and receive the executive signature, in which case its defects would not be noted until it had made its way upon the statute books. Ordinarily it was nobody's business to see that the bill was properly worded, free from ambiguity, and not in conflict with some provision of the state constitution. It was nobody's business because it was everybody's business—the two are the same thing.

Some results of amateur lawmaking. Under this arrangement a great many unsatisfactory laws went through the state legislatures. Time and again some "joker" was found after a measure had become the law of the land. The term *joker* is applied to any provision of a law which slips through unobserved and makes the law impractical or ridiculous or gives it an effect that was not intended.

A law may be passed, for example, forbidding the erection of billboards on the roofs of buildings. The purpose of this law may be all right, namely, to protect those who pass along the street below; but if the measure merely prohibits and does not provide a penalty, it will fail of its purpose. To leave the *penalty* out is to put the *joker* in. Occasionally, moreover, amendments are added to a bill during its passage through the legislature and these amendments are not properly fitted into the text, in which case the law may contain an amusing provision. For example, in one of the northwestern states the following section of a law went into the statute book: "No one shall carry any dangerous weapon upon the public highways except for the purpose of killing a noxious animal, or a police officer in the discharge of his duty." Another illustration from the statutes of a southwestern state: "All carpets and equipment used in offices and sleeping rooms of hotels and lodging houses, including walls and ceilings, must be well plastered and kept in a clean and sanitary condition at all times."

Legislative reference bureaus. This situation has been greatly improved in recent years by the establishment of institutions known as legislative reference bureaus. A bureau of this sort with a competent director in charge is now established at many of the state capitals. On the staff of the bureau is an expert draftsman whose duty is to assist legislators in the framing of bills. These bureaus keep on file copies of laws which have already been passed in other states in order that they may have models to go by. It should be explained, of course, that legislative reference bureaus have nothing to do with the question as to whether a bill ought to be passed or defeated. It is not

the business of the bureau to give advice on the general wisdom of any measure; its only function is to help the legislature to plan its work more intelligently and with fewer mishaps. The legislature, not the bureau, decides whether the purpose of the bill is good. If it so decides, the question then becomes one of putting the provisions in such form as will secure its purpose. Such legislative reference bureaus are most valuable and ought to be established in every state capital.

Growth of state expenditures. The cost of state government has been growing at a rapid rate during the years since the close of the World War. Taken together, these expenditures amount to a very large sum, although they are less by a good deal than the total outlay for national government. This is chiefly because the states, as such, have no large war debts and no heavy expenditures for military purposes. The combined expenses of all the states amount to about a billion dollars per year. New York State spends over a hundred million annually, while Nevada spends less than one million. The expenditures of the state governments have more than doubled during the past twenty years. They have been growing much more rapidly than population. State expenditures vary in different parts of the country. On the average they amount to about ten dollars per capita annually at the present time.

The difficult problem of state finance. Financially, the states are in a rather difficult position. The Federal government derives its revenue from the usual sources of indirect taxation. It obtains a large sum from the levy of duties on imports and from taxing the incomes of corporations and the incomes of private individuals. It also levies an

inheritance tax and imposes a considerable number of excise taxes. The counties, cities, and towns, on the other hand, have claimed a monopoly of direct taxation. They insist that the right to tax land, buildings, and tangible personal property, such as machinery, stock on hand, and furniture, belongs exclusively to them. The state is supposed to find its revenue somewhere between these two fields, and has had to do it by invading both of them. It obtains part of its income from indirect taxation and thus to some extent invades a field of taxation that is already used by the national government. When necessary, it also invades the field of local taxation by requiring that a portion of the proceeds from direct taxes be handed over to it. What the states really need are some new sources of revenue. The gasoline tax is one which has been discovered in recent years and is proving profitable. It is desirable that others of the same general sort be found. The state, like the nation and city, ought to have some definite areas of taxation reserved to itself. Otherwise it will not be able to carry on the increasing number of functions which the people expect it to perform.

The problem of improving the electorate. The foregoing are some of the important and fundamental problems of state government at the present time. But there is a problem which transcends them all; namely, that of improving the quality of the electorate. A government will be as good or as bad as the voters make it. The voter—not the constitution, the governor, the legislature, the administrative system, the legislative reference bureau, or the tax system—is the fundamental fact in all popular government. If you want to improve things, you must begin with him. Mechanical changes in government may

be good so far as they go but no one of them, nor all of them put together, will ever make a satisfactory government out of an indifferent populace. Reform in state government, like all other political reform, ought to come from below, not from above. It must begin with the political education of the voters. No people ever consciously chose to be misgoverned or will tolerate misgovernment cheerfully; but many a time people have been misled into choosing the wrong men for public office and the wrong side of an important issue. The work of interesting people and educating them upon questions of the day has been last and least among the functions of the American state, whereas it ought to be among the first and most important.

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QUESTIONS ON THE TEXT

1. How has the system of American national government influenced the states? Has this influence been advantageous? If so, in what way?

2. Compare and contrast state rights and national powers. Give some illustrations of each.

3. How may state constitutions be improved? Should a constitution enumerate the specific duties of the legislative and of administrative officers? Should it specify the powers of the courts?

4. Should the powers of the governor be further increased? If so, why and how?

5. Why have the powers of state legislatures declined? Is this a good or a bad thing?

6. Should there be a consolidation of state administrative departments? To what extent and in what way? Why is this consolidation difficult to bring about?

7. Compare and contrast the Federal and state governments as respects centralization of responsibility.

8. What is the state budget? How is it framed in your state? How might it be improved? Distinguish between an executive and legislative budget. What power of veto does the President have over the national budget? What power of veto does your governor have over the state budget?

9. What are the arguments for and against a single legislative chamber? Which do you think are the more weighty?

10. Why are large cities discriminated against in representation?

11. How may the quality of the state laws be improved?

12. What have been some of the results of amateur lawmaking? Do legislative reference bureaus help to improve the situation? In what ways?

13. From what new sources does your state derive its revenues? Are these revenues adequate? If not, what further sources can you suggest?

14. How may the "quality of the electorate" be improved?

15. What urgent problems are now confronting your state? What solutions have been proposed? Do you think that they are good solutions?

QUESTIONS FOR DISCUSSION

1. The Civil War was fought to settle the question of national sovereignty vs. state sovereignty. It established national sovereignty. Yet the national government has from time to time refused to compel

a state to fulfill its obligations on the ground that it did not have the power. Are you able to reconcile this with "national sovereignty"?

2. Suppose you were drawing a new state constitution. What would you provide concerning (a) the form and size of the state legislature, (b) the governor's powers, and (c) the heads of departments?

3. Would a compulsory voting law improve the quality of the electorate? If so, in what way?

4. If all voters are supposed to be equal, is it right to give rural districts more than their share of representation?

TOPICS FOR ESSAYS

1. The Influence of National on State Government. 2. National Sovereignty vs. State Sovereignty. 3. How Our State Constitutions Might Be Improved. 4. The Proper Powers of a State Governor. 5. Why State Legislatures Have Declined in Influence. 6. Our American Kings. 7. Should State Legislatures Have Two Chambers? 8. Commission Government for the States. 9. Rural and Urban Representation in the State Legislatures. 10. The Reasons Why Large Cities are Discriminated against in Representation. 11. How the Quality of State Laws May Be Improved. 12. Amateur Law-making and Jokers. 13. Legislative Reference Bureaus. 14. Is the American Electorate Improving?

SUBJECTS FOR DEBATE

RESOLVED:

1. That the decisions of a lower court should not be subject to appeal except with the consent of the judge who has heard the case.

2. That the electorate would become more interested in politics if we had compulsory voting laws.

3. That cities and rural districts should have the same proportionate representation in state legislatures.

CHAPTER XXIV

COUNTIES AND RURAL COMMUNITIES

1. There are some towns in the United States with populations as large as 30,000, and some cities with less than a thousand people. What should be the dividing line between town and city?
2. Sonoma County is entirely a rural area, without any cities or large towns. Middlesex County is very largely made up of cities, about a dozen in all. Cook County consists of one great city with a small fringe of territory outside. New York County covers merely a part of a great city. Should each of these counties have the same form of government? In the case of the urban counties what should be the division of functions between the county and city governments? In Virginia each large city forms a county by itself. Do you approve that plan?
3. In some parts of the Middle West the original settlers came partly from the South and partly from New England. There was much controversy as to what form of local government should be established. What form did each group of settlers desire and why? What was the outcome? To-day there are 86 counties in Illinois which are divided into townships and 16 counties which are not so divided. Has this fact any historical significance? If so, what is it?

Importance of local government. Local institutions form the very foundations of all free government. It was in the village and the town that democracy began. It was there that people obtained their first elementary lessons in the art of self-government. They had first to learn how to govern small communities before they could hope to govern large ones. In trying to learn anything we always

begin with the easiest problems, and it is by the same process that people learned the art of government in state and nation. It is essential, therefore, that self-government shall be preserved in counties, cities, towns, and villages, because all higher government rests upon this broad foundation. Town councils and city councils, county boards and village boards form the great public schools of citizenship. Thousands of men and women obtain, by service in such local bodies, their first practical training in public affairs. Then they constitute a great reservoir from which we draw many of our state legislators and congressmen. People do not usually become candidates for public office direct from private life. They begin, as a rule, somewhere near the bottom of the ladder. Then, if they are interested and prove successful, they seek promotion. Hence it stands to reason that if competent men and women cannot be persuaded to take an active part in local affairs it will become increasingly difficult to obtain competent and experienced legislators in state and national government.

What local government does. What is local government? Broadly speaking, all the functions of government fall into two divisions. *First*, there are those which relate mainly to the life and activities of the neighborhood, such as police administration, fire protection, the cleaning of streets, and the care of the poor. Such things can best be managed by the local authorities. *Second*, there are functions of a more general character which relate to the life and activities of the entire state or nation, such as the regulation of the railroads, the coining of money, the maintenance of post offices, and the control of corporations. Being general in character, such functions are naturally given to the state and national governments. The line

between local and general functions is not a hard and fast one, however; hence the same work may occasionally be shared by both the local and the state authorities. Education is an example. The public schools are local institutions; but normal schools and the state universities are not.

In earlier days, before industry and commerce developed on such a vast scale, local functions formed the more numerous class; but as the population thickens, the whole country tends to become one great community, with closely interlocking interests. Hence many tasks that were formerly performed by the local authorities are being taken over by the state. Public health protection affords an illustration of this. A few years ago, to take a more specific example, each town and village made its own regulations concerning the speed limit for automobiles; to-day such matters are dealt with by general law for the whole county or the whole state.

The beginnings of local government in the United States. Local government is the oldest branch of government. When the first colonists came from England to Plymouth and Massachusetts Bay they settled on small farms and built their homes within short distances of one another. In Virginia, on the other hand, the earliest settlers took up large plantations for the growing of tobacco and cotton; hence their homes were spread over a wide area. Because of this difference in the manner of settlement, the New England colonists organized themselves into towns (or townships) while the Southern colonists created larger units of local government known as counties. From the Atlantic seaboard these two types of local administration—township and county governments—have spread out over the rest of the country, but in the course of this

expansion they have been considerably altered from their original forms.

The county. Every state in the Union is now divided into counties.¹ The division is made by the state legislature, but when county boundaries are once fixed, they are seldom changed thereafter. In the older states the counties are mostly small in area, but in the newer states they sometimes cover several hundred square miles.² Counties, like cities, are public corporations; that is they have the right to own property, to raise taxes, to borrow money, and to make contracts. They may sue and be sued in the courts. But counties have no inherent rights of their own. They are merely political divisions of the state, created for the more convenient administration of local affairs. All county powers are derived from the state. In some cases, it is true, the people of each county are permitted to select and establish such form of county government as they may choose, that is, they are *home rule* counties. But as a rule the state legislature prescribes a uniform type of government for all the counties no matter what their size or character.

How counties are changing. In early days practically all counties were rural areas. County government was rural government. County officials had very little to do. They built a few roads and provided a county court. But with the growth of numerous towns and cities a great many counties have now become urban areas, some of them almost solidly so. Hence county functions have become much more numerous, more complicated, and more impor-

¹In Louisiana, however, the counties are known as parishes.

²The largest county in the United States is San Bernardino County, in California, which covers more than twenty thousand square miles. The smallest is Bristol County, Rhode Island, with about twenty-five square miles. Cook County, which includes Chicago, has the biggest population, and Cochran County, Texas, with less than one hundred people, has the smallest.

tant. Some county governments are really city governments in everything but name. Often they duplicate work which the officials of cities and towns within the county are trying to do. And too often this county administration is poorly done, for the old machinery of rural days has been retained in most counties and is inadequate.

The county officers. The chief governmental organ of the county is the county board, the members of which are usually known as commissioners or supervisors. These members are either directly elected by the voters of the county or are sent as representatives by the townships. County boards sometimes have only three members; in other cases they have as many as fifteen, for each state has its own regulations as to size. The county board has its headquarters at the county seat, where the county courthouse is located.

The functions of a county board may be summarized under six heads.

1. *Financial.* Most county boards have the right to levy taxes and to make appropriations for expenditure. They have authority from the state legislature to borrow money on the county's credit. This borrowing power is exercised in order to construct county roads, build bridges, or provide county buildings.

2. *Highways and bridges.* In many states all the main highways are designed as state or county roads. The towns and townships are responsible for the construction of minor highways only. State roads are built by state highway commissioners or some such body, but county roads are constructed and maintained by the county board. In some states these county roads are numerous; in others they are very few. Main bridges which connect two cities,

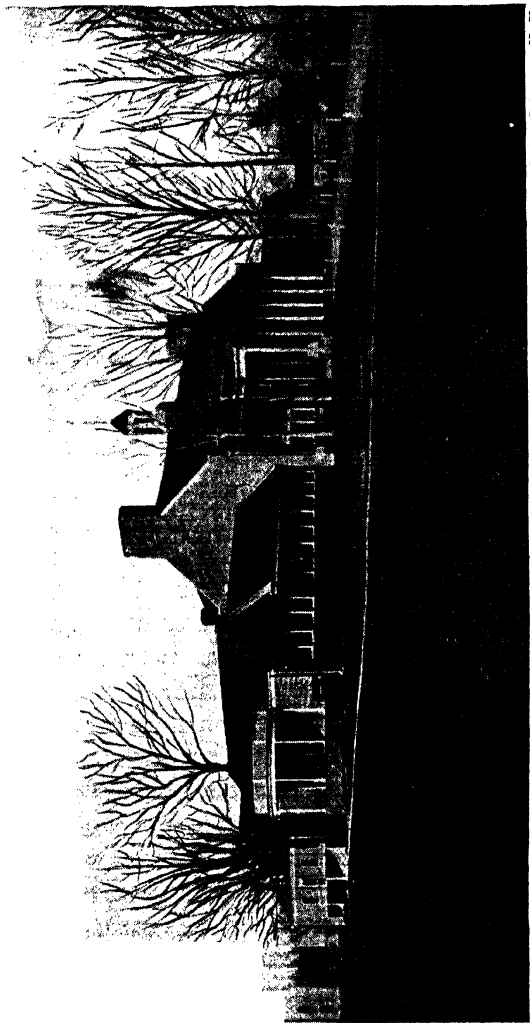
towns, or townships are also built and maintained by the county board.

3. *Public buildings.* Every county requires certain public buildings, including a courthouse, a county jail, a registry of deeds, a county poorhouse, and sometimes a county hospital. These buildings are erected and managed by the county commissioners or supervisors out of county funds.

4. *Poor relief and correction.* The function of providing public poor relief is to some extent performed by the state and municipal authorities, but a good deal of the responsibility still rests upon the county authorities. Hence most counties maintain a free hospital, a workhouse or poor farm, a house of correction, and often various reform institutions.

5. *Elections.* In most states of the West and South the county board has charge of the local arrangements for state and national elections. It designates the polling places, appoints the election officers, and provides the ballots. The county, in most of the states, serves as the unit for the selection of senators and assemblymen in the state legislature.

6. *Miscellaneous.* Finally, the county boards have sundry other functions. They make county ordinances which deal with traffic on county roads, sanitation in rural parts of the county outside the borders of cities and towns, the protection of fish and game, the destruction of predatory animals, and the protection of property against river floods. Occasionally the county boards grant charters of incorporation to private companies. In some states they construct irrigation works and arrange for the abolition of grade crossings on railroads. Finally, they often help in the



From Ewing Galloway, N. Y.

AN ATTRACTIVE WELFARE INSTITUTION
The Durham County Home, Durham, N. C.

selection of jury panels and have authority to grant certain licenses.

The county-manager plan. In view of the large amount of executive work which is imposed upon the county boards, it has been suggested that these boards ought to confine themselves to settling questions of general policy, leaving to a county manager the entire work of actual administration. In a few counties this suggestion has been put into effect. The county manager is a trained and highly paid official, appointed by the county board to purchase all materials and supplies, to hire labor, and to prepare contracts for the construction of public buildings. In a word he is the board's general agent and attends to all the details which arise in connection with its work. The board merely makes the decisions and the manager carries them out. In this way, by concentrating all administrative work in a single hand, a great deal of waste and inefficiency is avoided. When there is no county manager, the work is distributed among a number of officials, with a division of responsibility and a needless spending of public money.

The county as a judicial area. In the administration of justice, the county plays an important part. County courts exist in nearly all the states and although they form an integral part of the state judiciary, they have jurisdiction over such matters within the county as the laws may provide. Both the organization and the jurisdiction of the county courts differ greatly from state to state. In some states each county has its own judge; in others there is one judge for a group of counties. In such cases the judge holds sessions at one county courthouse after another. The county court usually hears appeals from the local courts

(see p. 389) and in addition has original jurisdiction where more serious controversies arise and especially in cases where a jury is needed. The probating of wills is in most cases a function of the county court. Appeals from its decisions may usually be carried to the higher tribunals of the state.

The sheriff. Every county has a peace officer known as the sheriff, usually elected by the voters of the county. He is the chief guardian of the law and the right arm of the county court. Historically, this is the oldest office in the country. It goes back to the time of William the Conqueror, or earlier, when the shire-reeve was the agent of the English king in keeping law and order. Sheriffs have the right to appoint deputy sheriffs whose duty it is to help preserve the public peace, to make arrests, and to serve court papers. Sometimes the sheriff and his deputies are paid regular salaries, but more often they obtain their remuneration from fees. The sheriff is the custodian of prisoners in the county jail; he summons the jurors to the court sessions, and carries out all the judgments rendered by the court.

The prosecuting attorney. Attached to every county court there is a legal officer who is commonly known as the prosecuting attorney, or county attorney, usually elected by the people.¹ His chief duty is to conduct prosecutions before the county court. He investigates crimes, prepares the evidence, and usually lays the case, first of all, before a body known as the grand jury. This jury is selected by lot from among the voters of the county. Bear in mind that a grand jury does not go into the question of guilt or innocence, but merely determines whether an

¹In some states he is known as the district attorney, state's attorney, or county solicitor.

accused person should be placed on trial before a trial jury in a county court. In some states it is not necessary for the prosecuting attorney to lay the case before a grand jury; as an alternative he may merely file a sworn declaration, called an information or complaint, stating his belief that there is sufficient ground for placing the accused person on trial. Prosecuting attorneys everywhere have a good deal of discretion in the way of discontinuing a prosecution or placing it on file. In some counties there is also a public defender whose duty it is to conduct a defence for anyone who is not able to employ a lawyer himself.

Other county officers. There are various other officers connected with county government. The county assessors go about the county and assess property for purposes of taxation. The county treasurer receives the taxes and pays the county's bills. The county auditors inspect the financial accounts of all county officers. The registrar of deeds, or recorder, keeps books in which all deeds and mortgages on land are entered. The county coroner has the duty of holding an investigation or inquest whenever a death takes place under circumstances which excite suspicion of crime. For this purpose he summons a coroner's jury of citizens to determine the facts. They do not determine guilt or innocence, but may recommend that a suspected person be arrested and held for trial. In some states the office of coroner has been abolished and its functions given to an appointive official known as the medical examiner, who is always a physician. In addition most counties have a county health officer whose duties are concerned with the protection of the public health, especially in the matter of preventing the spread of epidemics. In many counties there is a county superintendent of schools whose duties

are indicated by his title. Practically all these officers are elected, usually for a short term of years.

Metropolitan counties. Special problems of county government arise whenever a great city spreads itself over a whole county or over a very large portion of it. Examples are to be found in New York City, which includes five counties within the city limits. The city of Philadelphia includes the whole of Philadelphia County; Suffolk County is almost entirely covered by the city of Boston, and the city of Cleveland contains nine tenths of the population of Cuyahoga County. These cities are largely independent of the counties within which they are located, but the functions of city and county government run close together at many points. For example, the sheriff of the county and the police commissioner or police chief of the city are both responsible for the maintenance of law and order. The result is, quite often, a duplication of work and friction between the two. Both the county and the city, again, may have health departments which do not always work in harmony, but may checkmate each other because of political rivalry. Now and then the county and the city have their own assessors who duplicate the work of assessing property for taxation. It has been proposed that the city and county governments, in the case of metropolitan counties, should be substantially combined to prevent this duplication. Under such a combination the city council acts as the county board and assumes all the functions formerly exercised by the latter. One police department, one health department, and one group of assessors do all the work. It is an economical arrangement. To some extent this amalgamation has been done in the cases of St. Louis, Baltimore, Boston, and San Francisco. In other

large cities various plans for entire or partial unification are under way.

The reform of county government. For the improvement of county government throughout the country, three important changes in present organization and methods seem to be needed. In the first place, some provision should be made for the better handling of executive work. As matters now stand there is no county official corresponding to the President, the governor, or the mayor in national, state, and city government respectively. Responsibility is scattered into too many hands. It ought to be centralized in a county manager or some other single administrative official. Second, the number of elective county officers should be reduced. There is no sound reason why treasurers, auditors, and superintendents of schools should be appointed in cities (as is usually the case) but elected in counties. The practice of electing so many administrative officers makes the ballot long and cumbersome; it also leads to the choice of men who have no qualifications other than popularity. What is even worse, it encourages frequent changes in the incumbents of these offices and thus interferes with the efficient management of the county's business. Finally, the merit system could be advantageously extended to include all subordinate county positions. At present only a few counties have provision for appointments under civil service rules. Employees in county offices, in the highway department, and in county institutions are mostly appointed as a reward for political activity. They should be placed upon a basis of civil service competition, and promotions should be made by reason of merit and efficiency, not in response to political influence.

Towns and townships. For purposes of administration, the counties are divided into towns, townships, or county districts; but whenever any portion of the county becomes thickly settled it is usually organized as an incorporated village, an incorporated town, a borough, or a city. It will be seen, therefore, that there are at least seven different units of community government in the United States, not to speak of the various special incorporated districts which exist in some of the states. The reason for this great diversity is to be found in the fact that the American system of local government has grown up gradually and in each state independently. In most European countries the system of local government is uniform; in the United States it is not. Each state has its own system and in no two states are these systems exactly alike. For this reason, only the broad outline of the subject can be presented; the details must be studied in the localities concerned.

The New England town. Among the areas of community government, the New England town is the oldest and the most interesting. It is not always, or even usually, a thickly settled place. These towns differ greatly both in size and in population; they are usually quite irregular in shape and may contain anywhere from a few hundred to several thousand people. The New England town does not possess a charter of incorporation, but it has the usual corporate powers. The chief governing organ of the New England town is the town meeting, an assembly of all the voters, both men and women. This town meeting is called together at least once a year and often three or four times. It elects the town officers, votes the appropriations, and decides all questions of general policy. Sometimes the town meeting lasts all day; occasionally it continues

even longer. Every citizen has the right to a voice and a vote.

During the interval between town meetings, the affairs of the town are managed by a board of selectmen composed of three or five members and elected by the voters. The selectmen prepare the business for the town meeting and carry out its decisions. The larger towns also maintain various other boards, such as a school board, a water board, and a board of health, the members being in all cases elected at the town meeting. Other town officials include a town clerk, a treasurer, an auditor, and a superintendent of schools.

When towns grow large, the town meeting becomes unwieldy and the system of administration by numerous boards fails to work smoothly. For this reason some New England towns have recently adopted a *limited-town-meeting* system by which the voters of the town elect delegates to represent them in the town meeting. A few towns have also abolished the various administrative boards and have placed town administration in charge of a town manager appointed by the selectmen.

The township. In the great group of Middle Atlantic and Western states ranging from New York and Pennsylvania to Nebraska and the Dakotas, the principal area of community government is the township, although it is sometimes called the town. In the older states these townships (or towns) are of irregular shape; in several of the newer states the so-called "congressional" townships were laid out in uniform blocks, six miles square. In some of the states, both old and new, the towns or townships have town meetings, as in New England, but nowhere outside of New England have these meetings attained any great

importance. Their chief function in the Central and Middle Western states is to elect the town or township officers. The work of township (or town) administration is carried on either by a board of trustees or by a single official commonly known as a supervisor. There are also various subordinate officials, all of whom are usually elected by the voters.

The county districts. In most states of the South and Far West there are no townships. The county remains the principal area of local government, but for the management of various community affairs the county is divided into districts. There are school districts, road districts, and election districts, for example. Each district has its own elective officers who are in charge of the function for which the district was established.

The incorporated communities. The vitality of townships and district government has been weakened by the practice of incorporating as a village, town, borough, or city any portion of the area which becomes thickly settled. The laws of the various states usually provide that whenever any part of a community becomes sufficiently populous, a designated number of the inhabitants may petition for incorporation. The question is then submitted to a vote, and if the vote is favorable, a charter of incorporation is granted. A certain minimum of population is required, usually from two to three hundred in the case of a town, and more than three thousand in the case of a city. These figures vary from state to state. In some western states the minimum for incorporation is only a few hundred. In any event, when the place is incorporated as a village, town, borough, or city, it becomes separate, for administrative purposes, from the township or district

to which it belonged and sets up a local government of its own. The nature of this government, the officials, and the scope of their powers are all fixed by the laws of the state. There are more than fifteen thousand incorporated villages, towns, boroughs, and cities in the United States; nearly three fourths of them are places of less than twenty-five hundred population.

Merits and defects of the local government system.

The most marked feature of the American system of local government, when surveyed as a whole, is its decentralization. Nothing is uniform throughout the country; each state follows its own plan and everywhere a large measure of home rule in local affairs is granted. Contrast this with the system of local government in the French Republic, for example, where all communities, whether large or small, are governed in exactly the same way and strictly controlled by the central authorities in Paris. The American system has the advantage of allowing each section of the country to adopt whatever scheme best suits its own particular needs. It also facilitates the making of experiments in local government, and through these experiments we learn better ways of doing things. The large measure of local home rule brings community government close to the people, giving them control over it and responsibility for it. It fosters initiative and tends to develop a wholesome rivalry in good work.

On the other hand, the American system has its defects. So many areas of local government have been created in some of the states that the people are overgoverned. The multiplication of local offices has led to wastefulness. Local *home rule*, moreover, has in some cases been a synonym for local *misrule*. The result is that we have required, during

recent years, an increase in the amount of control exercised over the government of the local communities by state and county authorities. Townships, towns, and villages are areas of government established to meet local needs, but they are also channels through which the state authorities carry on a portion of their work. This latter phase of local self-government should not be overlooked.

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QUESTIONS ON THE TEXT

1. What is the fundamental importance of local government? Show how it serves as a training school for civic leaders. Give some illustrations.
2. Why are local functions decreasing and state functions increasing? Give some examples of the change.
3. What two general types of local government are found in the various states? Where did they begin and why?
4. "Counties, cities, towns, and townships are mere creatures of the state." Is this true? If so, how do you reconcile it with the fact that some towns are older than the state—in New England, for example?

5. How are county boundaries fixed? What powers do counties have from the fact of their incorporation? Are counties permitted to choose their own forms of government? Their own county seats?

6. What functions does a county board perform?

7. What is meant by the county-manager plan? What are its merits? Its defects?

8. What kinds of cases does the county court deal with? Is its jurisdiction the same in all the states? What are the differences if any?

9. Give the duties of the (a) sheriff, (b) prosecuting attorney, (c) county auditor, (d) coroner, (e) medical officer, (f) county superintendent of schools, (g) public defender.

10. Why have some counties abolished the office of coroner? What officer have they substituted?

11. When and where did the office of sheriff originate? What does he do to-day?

12. Does the prosecuting attorney determine the guilt of a person? If not, what does he determine?

13. What is an urban county? A metropolitan county? What special problems of government arise in a metropolitan county? What plan of city-county consolidation has been proposed?

14. What special problems arise in a county made up of both cities and rural districts? What solutions would you suggest for these problems?

15. Do you think that a public defender is a desirable officer in local government? Why?

16. What reforms are proposed in county organization and methods?

17. Where should administrative responsibility be placed in county government? Why?

18. What county officers do you think should be abolished? Why? What offices consolidated? What new officers created?

19. Should the merit system be extended to include all subordinate county positions? Why?

20. Into what areas of local government are counties divided?

21. What is a New England town? How is it governed? Who are the selectmen? How many are there? What are their duties? Who is the moderator? What does he do? How is a town meeting organized? What are its duties? What is a "limited town meeting"? Why was it devised? Do you think this a good arrangement? Why?

22. Is the New England town form of government a pure democracy? Prove your answer.

23. When, where, and why were townships created? What is the difference between a political township and a congressional township? What are their respective functions?

24. What is a county district? For what purpose is it created? Who are its officers? How are they chosen? What are their duties?

25. What is meant by an incorporated district? How and for what purposes are they created? How do they serve such purposes? Illustrate by some incorporated districts in your state (sanitary, fire, police, irrigation, flood control, park, or other districts).

26. What are the merits of the American system of local government? The defects?

QUESTIONS FOR DISCUSSION

1. The town of Brookline in Massachusetts has a population of over 35,000. It has outgrown the possibility of holding regular town meetings but desires to keep the town form of government. Therefore the citizens of Brookline have adopted a "limited town meeting" arrangement, under which several hundred delegates are elected to represent the people at the town meetings. On the other hand the town still retains its board of selectmen and all the other mechanism forms of town government. Is such a plan likely to prove successful? Would it be better for towns of this size to become cities? Why?

2. France has a highly centralized and uniform type of local government. The United States has a decentralized and diversified system of local government. What are the advantages and disadvantages of each system?

3. In many western counties the superintendent of schools is elected by the voters. Is this a good plan? What are the objections to it?

4. In Los Angeles County there is a public defender who takes civil cases under \$100, or criminal cases for those who cannot afford to employ their own lawyers. The public defender may appeal a case from a lower to a higher court if he feels that justice has not been done to the defendant. Do you believe in this arrangement?

5. Five towns and villages, each with populations of from five hundred to three thousand, desire to buy and operate an electric lighting and power plant. No one of them can afford to do this alone. How might they do it together?

TOPICS FOR ESSAYS

1. County Government in Colonial Virginia. 2. Town Government in Colonial New England. 3. The Functions of County Government. 4. The County Board. 5. The Metropolitan County. 6. The County as a Judicial Area. 7. The County-Manager Plan. 8. The County as an Election Area. 9. County Districts. 10. The Administration of Incorporated Districts. 11. New England Town Government. 12. The Limited Town Meetings. 13. Civil Service in the County. 14. Proposed Reforms in County Government. 15. The County Health Department, The County Superintendent of Schools, The Public Defender. 16. Congressional Townships. 17. The Office of Sheriff. 18. County Coroners and Medical Examiners. 19. Village Government. 20. Local Government as a Bulwark of Democracy. 21. Local Government in France. 22. Local Government in England. 23. Local Government in Germany. 24. Local Government in Switzerland.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the county-manager plan should be generally adopted.
2. That where a single city covers more than two thirds of a county, there should be a consolidation of city and county government.
3. That prosecuting attorneys in counties should be appointed by the attorney-general of the state.

CHAPTER XXV

THE AMERICAN CITY

1. In the seventeenth century an English writer (Sir William Petty) predicted that no city could ever grow above a million population. He figured that a city of a million would cover an area of about 30 square miles and that it would be virtually impossible to supply such a city with food. Yet we have cities of six or seven million (New York and London) to-day. Name some of the innovations, during the past two hundred years, which have made giant cities practicable. Is there any limit to the size of a city? If so, what is it?
2. There are some boys and girls in school to-day who will live to see the year 2000. By that time, if the present rate of city growth continues, about four fifths of the American people will be living in cities and towns, leaving only about one fifth on the farms. If such a shifting of the population takes place, how will American cities secure their food supply?
3. The state constitution provides in some states that cities shall have the right to frame their own charters, and in these charters may make provision for the administration of their own local affairs. Are the following subjects of *local* or *state-wide* importance: (a) fixing the standard for milk supply, (b) dividing the city into wards, (c) regulating the pay of policemen, (d) putting a tax on automobiles, (e) making rules for fire prevention, (f) licensing drug stores, (g) granting franchises to bus lines?
4. The charter of a certain city provides that all city officials shall be appointed by the mayor with the approval of the city council and that no official shall be removed by the mayor without the council's consent. Do you approve such a provision? Why?

What is a city? A city is a large group of population living in a compact area and governed under a city charter.

It is a tract of territory inhabited by a considerable body of people living close together. It is usually a place of busy streets and tall buildings; but not all cities are big, busy, and congested. In the United States to-day there are about a thousand places which call themselves cities, but more than half of them are communities of ten thousand people or less. Each state determines for itself how many inhabitants a town must have in order to become a city. In Kansas the minimum is two hundred inhabitants; in Massachusetts it is ten thousand; other states have figures all the way between. The United States census classifies as a city "any incorporated place which has twenty-five hundred inhabitants or more." But this is merely to make up the figures of urban and rural population for the country as a whole. In its legal rating a city may be anything from a rural hamlet with only two or three hundred people to a great metropolitan center with several million. Size or population, therefore, are not the determining things in cityhood, although they are inevitably of consequence in determining whether the city's social problems shall be simple or difficult.

Incorporation makes a city. Strictly speaking a place is not a city, however large it may be, unless it has been incorporated as such and possesses a city charter. Cities are made cities by law, and not by mere growth alone. In some of the New England states there are places of many thousands of people which are still called towns, and are governed as towns because they have not been incorporated as cities by act of the legislature. They desire to remain towns. Except for the lack of a city charter, these towns are cities in the usual sense of the word. In a word,

then, there are three essentials of cityhood, namely: a tract of territory, a group of people, and a city charter.

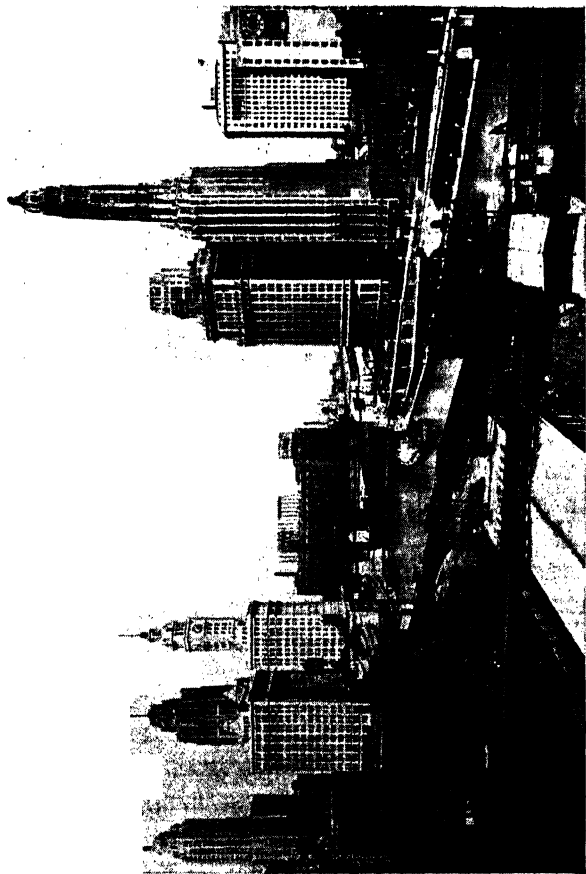
The amazing growth of cities. The remarkable growth of city populations is one of the most striking facts in American history during the past hundred years. When the first census was taken in 1790, only about 123,000 people, about 3 per cent of the population, were living in cities. In the entire country there were only five cities having more than eight thousand population. To-day there are at least five cities with more than a million. New York, the largest of them, contains nearly seven million people. Chicago has nearly four million and Philadelphia is approaching two million. Detroit, Cleveland, and Los Angeles have more than one million each. Boston, Baltimore, and St. Louis are approaching a million. The cities counted for very little in the early days of the Republic because they then contained such a small percentage of the national population.

During the course of the nineteenth century, however, new cities sprang into existence all over the country and a large part of the immigration poured into them. To-day about half the people in the United States are residing in cities of all sizes. The cities have grown much more rapidly than the country as a whole. There are now more cities in America than in any other country, and more large cities. We have fifteen great cities with populations exceeding half a million, while the entire British Empire (including Canada, India, Australia, and South Africa) has only twelve.

Causes of city growth. Various factors have contributed to this extraordinary development. For one thing,

improvements in agriculture have released men from the farms through the smaller need for farm labor. Industrial causes have also been of great importance, particularly the extension of the factory system with its insatiable demand for labor. An English poet once said that "God made the country and man made the town," which is true in a literal sense because men devised the means of utilizing steam power and this in turn has become one of the fundamental causes of city growth. Factories are established in cities, chiefly in the large cities, and the houses of the workmen are gathered around the factories.

Where the big cities are. Commerce also has had an important place as a contributing cause of city growth. Nearly all the great cities of the world are located on navigable waters. It is hardly a mere accident that among all American cities of over one hundred thousand people the ones which are not situated on navigable waters can be counted on the fingers of a single hand. They are nearly all on the Atlantic, the Gulf, the Great Lakes, the Mississippi, the Ohio, or the Pacific. Railroad transportation, again, has helped to build up the large communities, making it easier to get raw materials and to market the product of the factories. Political considerations, such as the choice of a place for the state capital or county seat have contributed to the upbuilding of some cities, such as Albany and Sacramento, while educational advantages have helped as many more, as in the case of New Haven and Ann Arbor. We are accustomed to think of the United States as an agricultural country, but it has ceased to be mainly a nation of farms and farmers. It is becoming industrialized at a rapid rate, with factories and factory workers increasing everywhere, and



From Ewing Galloway, N. Y.

THE GRAND CANYON OF CHICAGO

Looking along the river, west, with the great newspaper and office buildings flanking it on either side

we must expect a continuance of city growth as a result. Before a great while we shall probably have fifteen or twenty cities with more than a million each.

The cities and the nation. This is a fact of great social significance, for the influence of the city upon national life is much greater than most people realize. It is the cities that supply the leaders in all branches of activity, political, social, and economic. Through the city newspapers, through the various organizations which have their headquarters there, and through the leadership of the city in every form of propaganda, it is these large communities that mould the public opinion of the nation. A century ago the great majority of the American people were engaged in earning their living from the soil. They had the same occupations, and they had common interests. There were no great variations in wealth and education.

But now all this is changed. The occupations of the people have become diversified and no common bond holds them together. The city worker in the shops and factories is employed at a specialized task which develops his expertness in this one thing and not in anything else. The farmer supplies many of his own wants; the industrial worker depends almost wholly on others. Among the rural population there is a large property-owning class, men who own their farms and homes; but in the cities, particularly in the larger cities, a great majority of the people live in homes or apartments that are rented from others. In New York, for example, seven families out of every eight live in houses or apartments which they do not own. This tends to make the population restless and accustomed to move about, not living very long in any one place. Because of this shifting it is hard to build up neighborhood tradi-

tions. Home does not mean much to people when it consists of a few rented rooms from which the family may move out any time.

The effects of urban growth. Thus the growth of large cities has had a profound effect upon American life and temperament; it has changed the whole character of the country, its problems, and its habits of mind. So long as the cities keep growing, the effect of this growth upon the nation is likely to continue. America during the twentieth century is likely to repeat the experience of England in the nineteenth. England was an agricultural country a hundred years ago, but with industry forging rapidly ahead. Gradually the farms gave place to factory towns and the children who were born in the rural districts went to work at the looms and lathes. More and more of the food supply had to be imported. To-day England is a land of cities with millions of factory workers dominating the political, social, and economic thought of the country. From time to time we hear it predicted that there will be a reaction against industrialism and that people will begin returning to the farms, but there is as yet no sign of it in any country.

Concentration of foreign-born in the cities. One of the most striking features of the American social structure is the concentration of foreign elements in the large cities. In the United States as a whole, only thirteen per cent of the population is of foreign birth, but in the cities the ratio is much higher. Rarely is it less than twenty-five per cent and it sometimes reaches fifty. This raises the question why immigrants have gone in such large numbers to the crowded parts of the cities, and more particularly to the big cities. It is not merely because the immigrants land

there, for such cities as Chicago, St. Louis, and San Francisco are not ports of entry for European immigrants.

The reasons for it. The reasons for this massing of aliens in the cities are partly social and partly economic. The immigrant goes where he can be with others of his own race and language. Hence, whenever a colony of Italians, Greeks, or Poles gets a foothold in any large American city, it is sure to be continually increased by new arrivals. Economic factors also play a large part in the situation. The majority of immigrants come to America to find work, and it is in the cities that work can most readily be found. Factories and shops of the large industrial centers have afforded an almost unlimited demand for alien labor. Relatively few immigrants from European countries have come with much capital at their disposal. They have not been in a position to buy land or even to rent farms. Few of them have had any agricultural experience that would enable them to undertake farming under American conditions. Some immigrants have gone to the agricultural districts of the country, particularly in the case of the Scandinavians who have settled large portions of the Northwest; but for the most part the newcomers have concentrated in the industrial centers. It is on the cities, therefore, that the burden of Americanizing the alien has been chiefly placed, and a heavy burden it is.

City and state. The beginnings of city government in the United States may be found in the chartered boroughs of the colonial period. New York, in 1686, was the first American town to receive a borough charter, but various other communities became incorporated within a few years. Before the Revolution there were nearly a score of chartered boroughs scattered throughout the thirteen colonies.

These borough charters were in all cases granted by the colonial governor, and in a general way they were modeled upon the charters of the English cities of the time. But after the Revolution all borough charters were granted by the state legislatures. This was a very important change because it placed the city directly under control of the lawmaking body of the state. The state legislature now gave charters, and could amend them or take them away. The city became a subordinate area of government with a twofold purpose; *first*, to serve as a political subdivision for purposes of local administration (such as policing, fire protection, paving, and water supply), *second*, to act as the agent of the state in matters of general interest (such as holding elections and registering voters). Since the Revolution, therefore, the American city has been the creature of the state. It has no inherent powers, that is, no powers except such as the state has given it. Except in so far as the state constitution may guarantee certain rights of non-interference to the cities, the state legislature has a free hand in dealing with them.

Municipal home rule. This relative freedom on the part of the state legislature has permitted a great deal of interference in city affairs. In order to diminish such legislative interference, many states have made provision for what is known as municipal home rule. This is a plan whereby cities are allowed to make their own charters, just as states are given liberty to frame their own state constitutions. The methods by which they do this differ somewhat from state to state, but everywhere the main idea is the same. First of all, the voters of the city elect a charter commission, or board of freeholders, as it is sometimes called. This commission or board, which contains perhaps

fifteen or eighteen members, is instructed to draw up a new city charter or to revise the old one. When their work is completed, they submit the new or revised charter to the voters of the city at an election; and if the people approve it, the charter goes into effect. In some states there are various formalities to be gone through after the people have voted to accept the charter, but the important thing is that each city is supposed to obtain whatever sort of charter its voters desire. Under the system of municipal home rule, the people of the city become supreme in the handling of their own *local affairs*.

Its restriction to local affairs. But what are local affairs? That is the outstanding and fundamental question in respect to the actual workings of municipal home rule. Where is the line to be drawn between things which concern only the inhabitants of the city and those which affect the interests of the whole state? At first glance it might seem as though the care of the streets, the maintenance of police, the provision of a water supply, and the control of education were matters of purely local concern which each city ought to handle as its own people think best.

But when you come to look into the matter, you find that none of these matters are strictly local in character. The main streets of the city are thoroughfares of traffic which link up with the state highways; indeed, it is sometimes very difficult to tell where a city street ends and a state highway begins. The city police enforce the state laws; hence it is not possible to consider them as local officers only. So it is with health, education, poor relief, and the conduct of elections. To let the children of any community grow up unable to read and write is hardly a matter of purely local concern. The preservation of public

health in any city is a matter of urgent importance to the entire state because an epidemic pays no attention to municipal boundaries. Municipal home rule, if it were permitted to cover all these things, would be another name for municipal chaos. The relations between a city and the surrounding country have become so intimate, and each depends upon the other to such an extent, that no rigid line of separation between local and state-wide affairs can easily be drawn.

Home rule is necessarily limited. Municipal home rule means in practice, therefore, that cities shall be free to frame their own charters, and to determine for themselves their form of municipal government, provided they do not infringe upon the general laws of the state. This proviso is an exceedingly broad one, and as a practical matter reduces municipal home rule to a relatively narrow field. Nevertheless, in spite of this limitation, the home rule system has some important advantages. It relieves the state legislature from the necessity of having to deal with a multitude of local matters at every session. Likewise it helps to separate municipal from state politics and it encourages the people of the city to take an active interest in the making of their own charter. Thus it has an educative value.

The city charter. What is a city charter? It is a formal document having the same status as a state law. It may be framed by a local commission under the *home-rule-charter system* as already described, and then passed by the legislature; or the first step may be taken by the legislature itself. In some states there is a *general-charter system*, that is, all the cities of the state, no matter what their size or population, receive the same charter and are given

uniform powers of government. In other states the *special-charter system* is used; that is, each city receives a charter to suit its own particular needs, and this charter may be different from that of any other city. A third plan which exists in a few of the states is known as the *optional-charter system*. Under this method the state legislature provides four or five complete charters, any one of which may be chosen by the city through vote of the citizens.

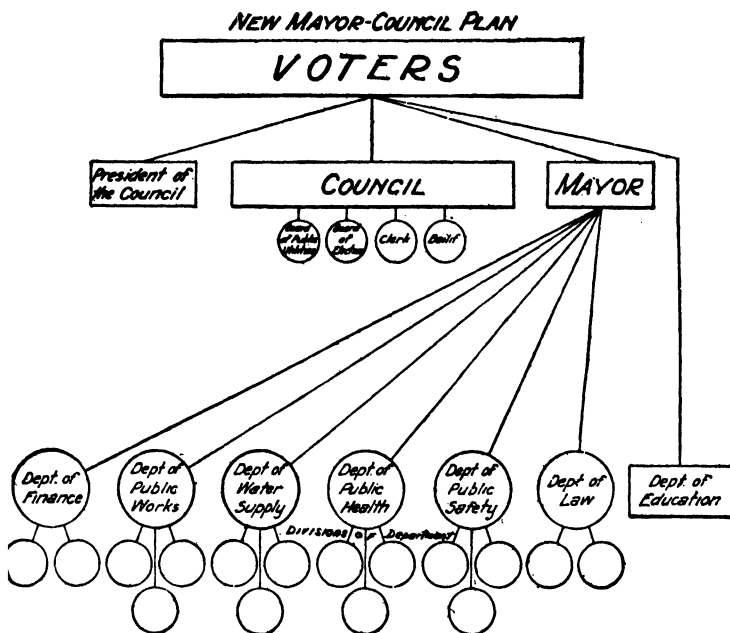
What the charter contains. In any case the city charter begins with a statement of the city boundaries and then declares the municipality to be a public corporation with various legal powers including the right to sue and be sued, to own property, to make contracts, and so on. Next it provides what officers the city shall have, how they shall be chosen and for what terms of office, how they may be removed, and (sometimes) what salaries they shall be paid. The charter also sets forth the powers and duties of various city officials, such as the mayor or city manager, the treasurer, and the auditor. Finally, it includes many miscellaneous provisions relating to such matters as the awarding of contracts, the making of the budget, the auditing of accounts, and the purchase of supplies. Some city charters contain long provisions relating to the initiative and referendum and recall, as described in a previous chapter. A charter may contain only general provisions, or it may include a great deal of detail. Hence charters are of varying length. In some cities the entire document occupies only twenty-five or thirty printed pages; on the other hand, the charter of New York City forms a ponderous volume of nearly fifteen hundred pages.

The city's legal powers and liabilities. A city, as has been said, is a municipal corporation. As such it has cer-

tain legal powers. It may buy and sell property, make contracts for the erection of public buildings, sell gas or water, maintain schools, and provide a system of parks for its people. The scope of these powers, as well as the manner in which they may be exercised, is set forth in the city charter and in the various state laws relating to local government. Having powers, the city also has various liabilities. Contracts made by the city can be enforced in the same way as contracts made by any ordinary corporation; but the city is not liable for the action of its employees to the same extent that an ordinary private corporation is.

A railroad or telegraph company is responsible for the negligence or inefficiency of its employees. If these employees make mistakes and cause loss to the public, the company must make good such loss. But in the case of the city, this liability extends only to such employees as are engaged in functions of a *commercial* nature, such as the water department, or the municipal gas plant. For damage which these employees may cause by their own negligence, the city becomes liable and can be sued in the courts. But the city is not liable for the negligence or inefficiency of the city employees when the latter are engaged in the performance of what are known as *governmental* functions; for example, the police, fire protection, and health departments. The courts have held that cities are immune from responsibility in such cases. If the fire department, through negligence, causes unnecessary damage to your property (for example, by flooding your house with water when the fire is in the next house) you can bring suit against the firemen who did this; but you cannot collect damages from the city which employs them. This distinction between commercial and governmental func-

government. In addition there were numerous administrative officials and boards chosen in various ways and performing a variety of functions. This type of city government, based on the principle of checks and balances, was virtually universal in the United States at the begin-



ning of the twentieth century. It is still the most common plan, although many cities have departed from it and have adopted newer forms of city government, particularly the commission plan and the city-manager plan, which will be explained in the next chapter. Among the ten largest cities of the United States, all except one have retained the mayor-and-council plan, and among the fifty largest cities of the United States, this plan of government still exists in

all but twelve. Despite the spread of the newer forms of city government, therefore, the old scheme is still the prevailing type throughout the country.

The mayor-and-council plan. Under the mayor-and-council form of government, the city's chief official is a mayor, elected by the people, usually for a two-year or a four-year term. He is nominated in the usual way and the election campaign is often conducted on a party basis. Occasionally men of high ability have served as mayors in the various cities, but far more frequently the position goes to some active politician who can be relied upon to use the powers of his office in promoting the interests of his own political party. Mayors are usually eligible to reelection and are frequently reelected for a second or even a third term. The authority of the mayor in the city is something like that exercised by the governor in state affairs. He makes the various administrative appointments, which in some cases require confirmation by the city council. He may veto ordinances or resolutions passed by this council. In some cities he has the exclusive right to propose expenditures, and in some others his assent is necessary for all municipal contracts. In general the mayor is the first citizen of the community and represents his city on all occasions of ceremony. Occasionally he is the head of the police department and directly responsible for it. When a mayor desires to communicate with the council, he does so by special message.

Heads of departments. It is impracticable, of course, for the mayor or any other single official to manage directly all branches of municipal administration. Hence the mayor is assisted in his work by various officers and boards, such as the superintendent of streets, the chief of police, the

water board, and the commissioner of health. In the larger cities the tendency is to put each department in charge of a single commissioner rather than a board, because the members of a board are too prone to disagree among themselves and delay business. In the small cities, however, the board system is still widely used; partly because it is thought to be less expensive. When a single officer is given charge of a department, such as police or fire protection, he must devote his whole time to it and hence he has to be paid a good salary; but members of an unpaid board can divide the work among themselves, each giving only part time to the work.

Boards *versus* commissioners. It is questionable, however, if this policy means any saving to the city in the long run. On behalf of the board system it is also argued that it gives political parties a chance to be represented, whereas a single officer can represent the controlling party only. But there is no good reason why departments which have purely business functions to perform should be given party representation. The board system has some distinct advantages when applied to such departments as education and public libraries, where discussion is desirable, but it does not work so well in such departments as police or fire protection where quick decisions are needed. Heads of departments and members of administrative boards are usually appointed by the mayor, although in a few cities they are elected by the people. In some cases the mayor has the right to remove such officials; in other cities he does not possess this power. The number of city departments and the functions of each are fixed by the terms of the city charter or by ordinances of the city council. Appropriations for the use of the departments are also

made by the city council, and in voting such appropriations the council may place restrictions upon the ways in which the money shall be spent.

The civil service system in cities. Every city employs a considerable number of subordinate officials, such as police officers, firemen, school teachers, health inspectors, park foremen, assessors, clerks, stenographers, and so on. These are usually appointed by the head of the department in which their work is done, but in many cities the appointment must now be made under civil service regulations. In such cases the head of a department sends to a board known as the Civil Service Commission and asks for a list of eligibles to fill any vacancy which may have arisen. The Civil Service Commission transmits a list of applicants who have passed the prescribed examinations. The names on this list are placed in the order of merit. Then the head of the department makes his selection of those who stand highest on the list. As a rule he is not under any obligation to pick the highest name, but as a matter of practice the choice is customarily made from among the highest three persons. When a municipal employee is appointed under civil service regulations, he cannot usually be removed except on definite charges and after a hearing. The civil service system does not apply in all cities of the United States at the present time, but it is rapidly spreading. It is a substitute for the old spoils system under which every head of a department appointed his own friends and relatives without respect to their personal qualifications.

The city council. Thirty or forty years ago the city council was usually made up of two branches. To-day it is almost everywhere composed of a single chamber only. The feeling is that a single chamber is safe and

sufficient. City councillors are elected sometimes by wards and sometimes by the whole city. The objection to the ward system is that it encourages the election of inferior men and inspires them, when elected, to strive for the interest of their own particular ward rather than for the welfare of the city as a whole. On the other hand, when councilmen are elected at large, the dominating party is likely to elect its entire slate and to control the whole council, thus allowing the minority no representation at all. In some cities an endeavor has been made to meet these objections by having part of the council chosen under each plan, some members from wards and some on a general ticket. The objection to the plan of election at large may also be overcome by the use of a system of proportional representation which is described elsewhere in this book (pp. 92-93).

Its powers. The city council is the lawmaking body of the city. It enacts the local laws or ordinances, and it also appropriates whatever money is needed to carry on the city's affairs. In this way it virtually determines the municipal tax rate. No expenditures can be made without the approval of the city council, and its consent is always needed before municipal indebtedness can be incurred. In some cities it also has power to confirm appointments made by the mayor and as a rule it can pass a resolution over the mayor's veto by a two-thirds vote. City councils do most of their work through committees.

The municipal courts. In addition to the mayor, who is the chief executive, and the city council, which is the legislative body, every city has a system of local courts. These are frequently known as *city courts*, but that appellation is misleading because they are in reality state courts. They form the lowest rung in the ladder of the state

judiciary. The judges of these police courts, who are sometimes known as *justices of the peace*, are usually appointed or elected by the city itself; in some cases they are named by the state authorities. City courts have jurisdiction over minor offences, and there is always a right of appeal to the higher courts of the state. A large part of the business now coming before the municipal courts is concerned with violations of the traffic rules. In a few large cities there are special courts for such cases.

Municipal politics. Most city governments are conducted on a partisan basis. In other words there are regular Democratic and Republican candidates for mayor and for city councilmen, and at the election there are party designations on the ballot. Forty or fifty years ago this was the almost universal rule, but more recently it has become the practice to eliminate such party designations in municipal elections. Nominations for municipal office are usually made by means of direct primaries and in a great many cities these primaries are conducted on a non-partisan basis. In other words any one who desires to be a candidate for municipal office may have his name placed on the primary ballot by presenting a petition which customarily must be signed by a certain small number of voters. The names of such candidates are then submitted to the voters of the primary and the two who stand highest are placed on the ballot for the final election. It should not be understood, however, that partisan politics can be eliminated from municipal campaigns by merely taking party designations off the ballot or by voting at nonpartisan primaries. Local politicians, representing both of the major political parties, usually strive to secure the nomination and election of their own candidates by appealing

to the voters on partisan grounds. In many of the large cities there are political bosses who endeavor to control the municipal government for their own advantage. The nonpartisan primary and the taking of party designations off the ballot do not always drive these bosses out of existence, but they make "bossism" much more difficult.

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QUESTIONS ON THE TEXT

1. What is a city? How does it differ from a town or a village?
2. What principal factors have caused the growth of American cities? Classify them as economic, social, and political.
3. Why do immigrants congregate in cities? Is this concentration undesirable? What remedy for it would you suggest?
4. What is the relation of the city to the state? Why must a city obtain a charter from the state? What privileges does this charter grant the citizens?
5. What is municipal home rule? What are its merits? What restrictions must be placed upon it?
6. In states that do not have municipal home rule, how are city charters secured? What does a city charter contain?
7. What are the city's legal powers? What are its liabilities?
8. May an individual sue the state for damages caused by a state employee? May he sue the city? Under what circumstances?

9. Describe the mayor-and-council plan of municipal government. Who elects the mayor? What are his qualifications? His term? Salary? Duties? What is meant by a *bicameral* council?

10. Who are the heads of city departments? How are they chosen? What are their duties? Should laymen serve on municipal boards? Why?

11. What are the advantages and disadvantages of boards or commissions? Is it better to have a single commissioner at the head of a department? Why?

12. Should all municipal officers be chosen under civil service regulations? Should all city officials be experts? Why?

13. Should city councilmen be elected at large or by districts? Defend your answer.

14. What are the functions of a city council?

15. Are the municipal courts part of the city government? Over what cases do they have jurisdiction? Compare them with the county courts.

16. Describe your own city government. What are its strong and weak features? What improvements would you suggest? How would you go about getting these improvements adopted?

QUESTIONS FOR DISCUSSION

1. It has been proposed that in order to place a check upon the continued growth of great cities, the state should grant tax exemptions to all new industries which are willing to locate in small towns or rural districts. Do you think this proposal a wise one?

2. The constitution of California gives cities the right to frame their own charters and in these charters to make provisions for the conduct of their own local affairs. A certain city inserts provisions in its charter relating to: (a) municipal courts, (b) milk inspection, (c) the qualifications for voting at city elections, (d) special assessments on property for local improvements. Do these matters come within the category of "local affairs"? Defend your answers.

3. A charter commission or board of freeholders has been elected to make a thorough revision of the old city charter. At their first

meeting it is suggested: (a) that they hold public hearings in order to secure from the city officials and from private citizens a list of the defects which are to be remedied; (b) that they make a study of city charters in other well-governed cities in order to see what may be profitably copied; (c) that they employ an expert in municipal government to advise them concerning the most up-to-date provisions; (d) that they take the model charter compiled by the National Municipal League and use it as a pattern; (e) that they go over the old charter, clause by clause, and make such changes as seem necessary. Which of these procedures seems to you the best? Why?

4. A certain city owns and operates its electric lighting plant, supplying light to private homes and electric power to industries. Because of a controversy with the city concerning the rate of wages, the employees of this electric plant go out on strike. The mayor of the city orders members of the regular police force to visit all the houses and industries in order to read the meters on the first of the month so that monthly bills can be rendered. One of these officers in performing such duty causes damage to a householder's property. Is the city liable for such damage? Explain.

5. In Boston the heads of city departments are appointed by the mayor, but the appointments do not become effective until the state civil service department certifies that it has found the appointee to be qualified by training or experience to the position for which he has been named. No competitive examination is held. The civil service department merely approves or disapproves on the ground of the candidate's qualifications or lack of qualifications as submitted to it by the mayor. Do you think this a good plan?

6. In England and in Germany it is the practice to have private citizens serve on committees of the city council as associate members. A city council committee, for example, may be made of five councilmen and three private citizens. These private citizens have a right to vote at committee meetings, but of course they do not attend meetings of the council or have any right to vote there. Do you think this plan meritorious as a means of securing expert service on council committees and would you advise its adoption by cities of the United States?

TOPICS FOR ESSAYS

1. The Growth of Cities during the Past Hundred Years. 2. What Problem Does City Growth Create? 3. Racial Blocs in Large American Cities. 4. The City Charter. 5. Municipal Home Rule. 6. The City's Legal Liability. 7. City Government in England. 8. City Government in France. 9. City Government in Germany. 10. The German Burgomaster. 11. The Office of Mayor in France. 12. The French Municipal Council. 13. The English Borough Council and Its Committees. 14. The Government of London. 15. The Government of Paris. 16. The Government of Washington, D. C. 17. The American Mayor. 18. The American City Council. 19. Boards *vs.* Single Commissioners in City Government. 20. The Heads of Municipal Departments. 21. Municipal Courts. 22. Nonpartisanship in City Affairs.

SUBJECTS FOR DEBATE

RESOLVED:

1. That all cities should have home rule.
2. That city councilmen should be elected at large.
3. That citizens should be allowed to vote either where their homes or business interests are.
4. That political parties should be kept out of city affairs.

CHAPTER XXVI

NEWER FORMS OF CITY GOVERNMENT

1. In some cities, under the commission plan of government, five commissioners are elected at large and then divide the departments among themselves, one becoming commissioner of public safety, another commissioner of public health, and so on. In other cities each commissioner is elected by the people to head a specific department. Which do you think the better plan? Why?
2. Give your reasons for or against the insertion of the following provisions in a city-manager charter:
 - (a) The city manager to be elected by the people every four years.
 - (b) The city manager to be appointed by the council but subject to recall by popular vote.
 - (c) The city manager not required to be, at the time of his appointment, a resident of the city.
 - (d) No one to be appointed city manager unless he has had experience in city government.
 - (e) All the more important appointments made by the city manager to be approved by the city council before going into effect.
 - (f) All minor appointments to be made by the city manager from an eligible list prepared by a civil service commission on the basis of competitive examinations. The members of the civil service commission to be appointed by the city council.
 - (g) The city manager to hold office for no definite term and to be removable by majority vote of the city council at any time.
 - (h) The city manager to preside at meetings of the city council but to have no vote except in case of a tie.

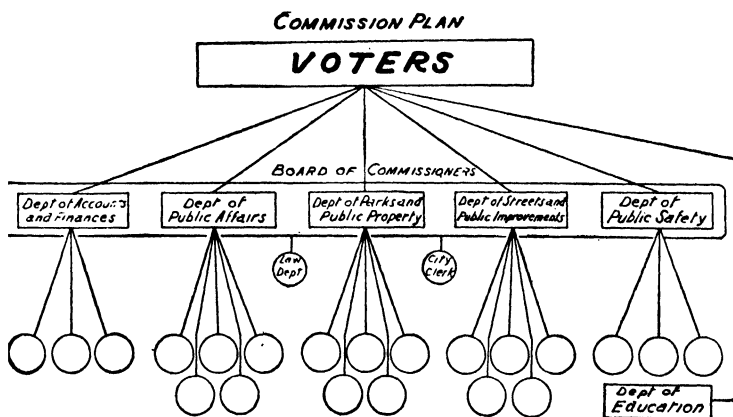
The old municipal system. Thirty or forty years ago the general plan of city government throughout the United States was the plan outlined in the preceding chapter of

this book. Municipal government was much the same all over the country. It was almost everywhere clumsy, slow-moving, wasteful, and unsatisfactory. Foreign observers called it the "one conspicuous failure" of the American people. It was a common saying that Americans governed their states well but their cities badly. Municipal reformers realized the force of this criticism and tried to remedy the situation. Charters were overhauled from time to time, and somewhat improved, but prior to 1900 city government continued to present the same unsatisfactory features in all parts of the country. Its outstanding feature was the division of powers between a mayor, who performed the executive functions, and a city council which served as the municipal legislature. In other words, the cities were governed on the same principle as the nation and the states.

The municipal revolution, 1900-1920. Since the opening of the twentieth century, however, there has been a virtual revolution in city government. Double-chamber councils have been abandoned. The mayor-and-council plan has been greatly simplified and improved. Furthermore, two new types of city government have come to the front and have spread with considerable rapidity throughout many sections of the country. One of them is known as the commission system of city government; the other as the city-manager plan. In both of these plans the principle of divided powers is abandoned and the ultimate responsibility for all phases of city government is concentrated in a single small body.

The commission plan. The commission type of city government originated in Galveston, Texas, following the partial destruction of that city by a tidal wave in 1900.

Prior to that date Galveston had a mayor and a city council with various elective officers, all chosen on a party ticket. The municipal debt kept growing year by year; the city departments were managed wastefully, and the tax rate was high. Affairs were in this condition when the tidal wave came, swept over the city, destroyed much property, and brought the municipal authorities face to face with a great emergency. Galveston virtually went



bankrupt because it was unable to pay the interest on its municipal bonds. Some of the leading citizens therefore suggested that the old city government be wiped out of existence, and that for a few years all the powers formerly vested in the mayor, city council, and heads of departments should be given to a commission of business men. In compliance with this suggestion, the Texas legislature provided that the citizens of Galveston should elect a board of five commissioners and that these men should have both executive and legislative authority. Thus at one stroke the doctrine of checks and balances was thrown

into the discard. Each of the five commissioners was to be the head of an important branch of city administration, while the five commissioners as a body were to pass the ordinances, fix the tax rate, and make all appointments.

Its rapid spread. The Galveston plan was not intended to be a permanent system of government for the city. Its main object was to enable the city to meet a difficult situation, but it soon showed itself to possess great merits in comparison with the earlier form of government. The business of the city recovered rapidly and in a remarkably short time the place was on its feet, financially and otherwise. Then people began to ask why the new form of government should not be kept permanently. Other cities in Texas, impressed by Galveston's experience, obtained permission to adopt a similar form of government and soon the experiment attracted attention in other parts of the country. The plan spread northward and within a few years gained adoption by popular vote in cities which were scattered in at least a dozen different states. By 1914 more than four hundred cities of all sizes had adopted the commission plan. Then came a reaction and many of these commission-governed cities changed to the city-manager plan, while a few went back to the old mayor-and-council form.

Essential feature of the commission plan. The essential feature of the commission plan is a board of five commissioners elected by the people. These commissioners are elected by the whole city for a term of two or four years and are usually paid for their services. One of the five commissioners serves as chairman of the commission and is customarily given the title of mayor. According to the original commission plan, as established at Galves-

ton, the mayor or chairman of the commission was given no veto power and no authority to make appointments. His duties were to preside at meetings of the commission and keep an eye on the general course of administration; nothing more. But this arrangement has not been strictly followed in other cities, some of which give the mayor additional powers. In any event, each commission (usually including the mayor) takes charge of a group of administrative functions, such as public safety, finance, health, and public utilities. As there are only five commissioners, there can be only five departments, or groups of departments. In a word, the commissioners have both collective and individual functions. Collectively, they form a city council; individually, they perform the functions which under the older type of city government were in the hands of the mayor and the heads of departments. It is a very simple frame of government.

Merits of the commission plan. Indeed, the most obvious merit of the commission plan is its simplicity. It eliminates the division of powers and responsibility which have too often been characteristic of mayor-and-council government. There is but one governing authority—the commission. All executive powers are possessed by it alone. Public attention can thus be concentrated upon one governing body, and there is no shifting of responsibility from one official to another. Being simple, the commission form of government is intelligible. Under the mayor-and-council form of government the average citizen sometimes does not know where the authority rests. Again, the commission plan of government is based on the principle that city government is business and ought to be conducted according to business methods. The commis-

sion is a board of directors, as in a private corporation. It meets in public, has no committees, and can act promptly. The plan is a truly democratic one in that voters are enabled to place the blame when taxes are too heavy or when public funds are wasted. Moreover, it has tended to bring better men into office and to afford them greater opportunities for the exercise of their ability.

Defects of the commission plan. On the other hand, the commission plan of city government has demonstrated some rather serious defects. The complaint is often made that a commission of five members is not large enough to be representative of all classes among the people of a large city. All the commissioners, being elected at large, may come from a single section or may represent one political party; the minority being given no representation at all. This is not unlikely to be the case when the five commissioners are elected by the voters at large.

The division of authority. A still more serious defect of the commission plan is to be found in the fact that the control of the various city departments is not brought to a single center but is parcelled into five separate hands. Each commissioner is responsible for a certain portion of the city's business, and no one is supreme over them all. The commission as a whole is supreme, to be sure, but it must trust its own individual members to handle their various branches of work. In other words, the commission plan establishes a five-headed executive and thus leaves room for disagreement among the commissioners themselves. Dividing the responsibility among five men is better, of course, than dividing it among fifty or sixty, as the mayor-and-council plan sometimes does; but putting it all upon the shoulders of one man is more effective still.

Amateur administration. Another practical objection to the commission plan is that it discourages the placing of capable and experienced officials at the head of the various city departments. Each commissioner, as has been said, becomes an administrator. It was contemplated in the original plan that these commissioners would have no special qualifications for administrative work but would turn this over to expert officials. Unhappily this expectation has not been realized. The practice of paying each commissioner a substantial salary has induced them to try to do the work themselves. Each commissioner, in order to make a show of earning his salary, feels that he ought to be the real and not the nominal head of his department, even though he be not qualified by training to perform this task.

The results. One result of this has been a good deal of disappointment as respects the reduction of municipal expenditure. When the adoption of the commission plan was being advocated in various cities, there were promises that the new scheme would result in a reduction of taxes. Very seldom have these promises been fulfilled. As a matter of fact, such promises ought never to be made by municipal reformers, for it is a reasonably safe prediction in any city, at any time, that taxes and expenditures keep going up, no matter what form of government is adopted. This is because the citizens in all progressive communities are constantly demanding more service and better service, no matter what the cost may be. On the other hand, the spread of the commission plan of government has proved of great value to the cause of better municipal administration. It embodied a protest against the old order and compelled many cities to clean house. It showed that the

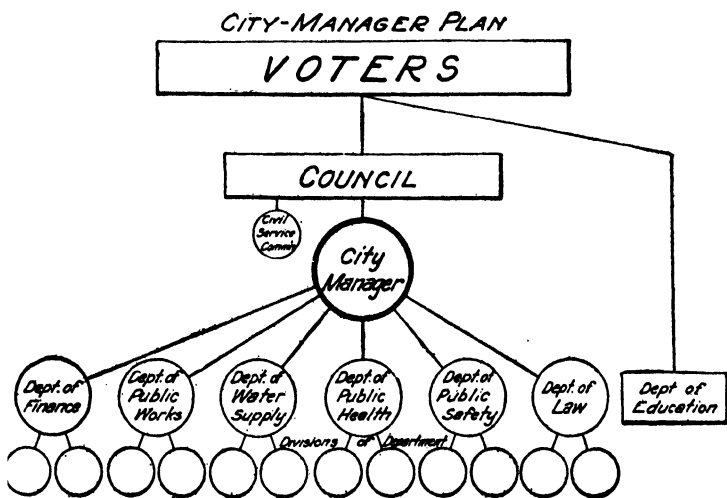
American people, when driven to it, will not hesitate to reform the entire system of local government in order to secure an improved condition of affairs.

☛ **The city-manager plan.** The two fundamental defects of commission government, as indicated in the foregoing paragraph, are: *First*, its failure to make provision for a single control over the entire work of city administration; and, *second*, its practice of putting the various city departments in charge of men who have no technical qualifications but are merely elected by the people because of their popularity. From the very outset these weaknesses began to show themselves. Hence municipal reformers set out to devise a plan of government which would overcome these disadvantages. In so doing they turned to the analogy of business corporations and decided that instead of having five commissioners who would divide the work of administration among themselves, they ought to hire a general manager to do it for them, just as directors of a railroad or a bank are in the habit of doing. In that way there would be a separation of functions but no division of power. Out of this quest grew the plan of government which is now known as the city-manager plan.

Origin of the city-manager plan. The first large city to try this plan of government was Dayton, Ohio, which adopted it in 1913. Dayton's experience was watched with much interest during the next few years by many other cities, and when the new plan appeared to be achieving good results, it started to spread. From the Middle West it spread widely and is still spreading. At the present time the city-manager plan is operating in about three hundred American cities, most of which are small communities with less than ten thousand inhabitants. Never-

theless, the list includes some cities of the first rank—Cleveland, Cincinnati, Kansas City, and Rochester.

Outstanding features of the city-manager plan. Under the city-manager plan there are two important factors in municipal government. *First*, there is a commission council, or board of directors, usually of five or seven members, elected by the voters of the city. In the larger cities this council is a body of considerable size; for example,



in Cleveland it consists of twenty-one members. In any case the council constitutes a “policy-determining” body. It passes the ordinances, makes the appropriations, authorizes borrowing, grants franchises, and decides all general questions; but it does not assume any direct share in the executive or administrative work of government. Instead, it is under obligation, by the terms of the city charter, to appoint an administrative official known as a city manager and to devolve all the administrative work upon him. In

short, the council hires the general manager of the municipal corporation and leaves the rest to him. Its big task, therefore, is to find the right man for this important position. In looking for him the council is usually empowered to go outside the city.

The *second* important factor is, of course, the city manager himself, selected by the commission, council, or board of directors to carry out the policy of that body, to look after the enforcement of its ordinances, and to transact the city's business.

Functions of the city manager. The functions of the city manager may be grouped under four heads:

First, he is the council's advisory expert on all questions of municipal policy. He attends its meetings and takes part in its discussions, but does not vote. He provides the councillors with such information as they may need for reaching decisions on any question of municipal policy. He is the connecting link between the legislative and administrative branches of the city government. The city council gives the general directions, and the heads of departments (who are the subordinates of the city manager) carry these instructions into effect. The council is under no obligation to take the advice of the city manager, but it usually does so on all technical questions; for example, on the type of street paving that ought to be used, or the best method of purifying the city's water supply.

Second, the city manager is the council's agent for enforcing the city ordinances and for carrying into effect any resolutions which the council may pass. In this respect the city manager inherits a function which has long pertained to the mayor in mayor-and-council cities.

Third, the city manager has the right to appoint and

remove all city officials, with a few exceptions, notably the city attorney and the city clerk who are customarily elected by the council itself. In the case of minor appointments, the city manager must make his choice in accordance with the civil service regulations whenever such rules have been adopted. These civil service rules usually give the city manager complete discretion in selecting the heads or directors of various departments, but require that all appointees to all subordinate positions shall be taken from the eligible list. Subject to the same restrictions, the city manager may suspend or remove officials from office.

Fourth, the manager takes entire responsibility for the general administration of the various municipal departments such as streets, police, fire protection, and public works. It is his duty to instruct the directors or heads of these departments, to secure proper harmony among them, to investigate complaints concerning their work, and to settle any differences which may arise. In short, he controls their various activities like the general manager of any business concern.

His responsibility to the city council. The city manager is not usually chosen for a definite term of years. He holds office during the pleasure of the council and may be dismissed by it at any time. As a general rule it is stipulated that the city manager need not be a resident of the city at the time of his appointment, and it has been quite common for cities to bring in outside managers. Preference, however, is commonly given to a local man. The manager is paid a good salary, gives all his time to the work, and is kept in office as long as he does his work satisfactorily. Members of the council are forbidden by the terms of the city charter to interfere with him in the

performance of his administrative work or to dictate the appointments which the city manager shall make. On the other hand it is expected that the manager will take the city council fully into his confidence and will consult the councillors on all important matters before going ahead. This is necessary for the preservation of harmonious relations between the two. The council represents the people and must assume the ultimate responsibility for every branch of city government.

Merits of the city-manager plan. The city-manager plan has now been in operation for about a dozen years. Some of its merits and defects have thus been given a full opportunity to show themselves. The merits of the system are obvious. It has enabled cities to unify the work of their various departments and to eliminate friction from among them. It has paved the way for the introduction of better business methods in the smaller cities, as well as for improved accounting and the more economical purchasing of supplies. The city manager is an expert in municipal administration, knows what to do and how to do it. The plan conforms to sound principles of public administration in that it provides a single responsible head for the city's business. When a citizen has any complaint to make, he knows exactly where to go. In all these respects, it is an ideal arrangement.

A hard position to fill. On the other hand, it has already become clear that the problem of city-manager government is to get the right manager. To get the right manager is in part a matter of paying the price. The city, under the manager form of government, must be prepared to pay a higher salary to its chief administrative officer than it was accustomed to pay its mayor

under the old system. Unhappily public sentiment often recoils from paying large salaries in any branch of the public service. The average voter thinks of the city manager in terms of work per day rather than in terms of responsibility. The position looks to him like an easy job with large powers attached to it. He does not appreciate the fact that the position of city manager requires professional and personal qualities of a high order. One reason why the plan has not worked better in many cities is to be found in the attempt to secure high-grade men for this position at low salaries.

Qualifications of the city manager. The successful city manager must not only be well versed in the technical phases of city administration; he must have energy, good judgment, and be able to get along with all sorts of people. He must deal tactfully with members of the council, with his subordinate employees, and with the public. Men who possess all these qualities are none too plentiful and their services are always worth a great deal to large corporations. There is no good reason why a capable man should serve the city for less pay than he can receive from a private corporation. On the contrary he is warranted in demanding more because private employment can offer promotion and security of tenure which the service of the city does not.

The future of city government. What the final solution of our problems will be in this matter, no one is yet able to tell. The two new plans of city government which have been described in this chapter may be merely a prelude to something still more. We cannot be sure that we have reached finality as respects any form or any type of local government, but the cities have made progress and

are still making it. New forms of government are being given a fair trial. Everywhere the municipalities are simplifying their administrations, making them more responsive to public opinion and better fitted to do the work that has to be done. Forty years ago it was commonly said that city government represented the most conspicuous failure of the American people. That is no longer true. Municipal misgovernment and waste have not wholly or even largely disappeared, but conditions are far better to-day than they were even a quarter of a century ago. The people of our cities have awakened; they are no longer misled by promises and excuses but insist upon knowing the facts. The task of to-day is to hold the improvement that has been gained and keep adding to it. That is a duty which belongs to every citizen, no matter what his age, occupation, or party allegiance. The world is becoming a world of cities, and he who helps to make his home city a better place is performing one of the higher duties of patriotism.

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See also the *National Municipal Review* and *The City Manager Magazine*

QUESTIONS ON THE TEXT

1. Why was the government of American cities called "a conspicuous failure" thirty or forty years ago?

2. What did the municipal revolution of 1900-1920 accomplish? How has the mayor-and-council plan been simplified?

3. Where and how did the commission plan of city government originate? Why did it spread?

4. What are the essential features of the commission plan? Has the chairman of the commission any power of veto or of appointment? If any, what? What twofold duties have the commissioners?

5. What are the merits of the commission plan? Its defects?

6. What important cities adopted the commission plan? Why have many cities abandoned it?

7. Where and how did the city-manager plan originate? What are its outstanding features?

8. What are the functions of a city manager? To what extent is he responsible to the city council? Should he be a local man? Explain.

9. What are the merits of the city-manager plan? Its defects?

10. What should be the qualifications of a city manager? Should he be trained for the office? Should we have schools for the training of city managers?

11. What important cities have adopted the city manager plan? Has it proved successful?

12. What is the future of our municipal system likely to be?

QUESTIONS FOR DISCUSSION

1. In Germany the municipal *burgomaster* must be trained for that profession as for any other profession. He is appointed for a long term of years. What do you think of this plan? Would you advise its adoption in American cities?

2. "A municipal executive must know how to handle men, must be fair and just, must be firm and polite, and must have the courage

of his convictions." Are there any other essentials? Should a mayor have these qualifications? A city manager? The head of a department? Can such men usually be found? Explain.

3. "Other things being equal the city manager ought to be a local man so that he will not have to spend time in becoming familiar with local conditions." "The city manager ought to be brought in from outside so that he will have no local prejudices and no local favorites." With which of these propositions do you agree?

4. "Cities must have *political* leadership, and since the city manager is forbidden to take any part in politics he cannot supply this leadership; hence the city-manager plan is defective." Do you concur with this statement?

TOPICS FOR ESSAYS

1. The Old Municipal System. 2. The Municipal Revolution of 1900-1920. 3. The Origin and Spread of the Commission Plan. 4. The Merits and Defects of the Commission Plan in Operation. 5. The City-Manager Plan: Its Origin and Development. 6. The City-Manager Plan in Practice. 7. The Qualifications of a City Manager. 8. The Duties of a City Manager. 9. The Government of New York City. 10. The Government of Cleveland. 11. The Government of Chicago. 12. The Government of New Orleans. 13. Schools for the Training of City Officials. 14. Are Forms of City Government Important? 15. The Future of American Municipal Government.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the city-manager plan is the most efficient form of municipal government.

2. That checks and balances are of value in municipal government.

3. That the United States should establish academies for the training of city officials similar to West Point and Annapolis.

4. That efficiency and democracy cannot be obtained in the same form of local government.

CHAPTER XXVII

WHAT LOCAL GOVERNMENT DOES FOR THE PEOPLE

It is sometimes said that municipal government is a combination of "business, politics, and philanthropy." Make a list of municipal functions showing the ones that come under each head.

Make a plan for the organization of the city departments which will include all the municipal functions listed below. Make as few departments as is practicable without putting unrelated functions into the same department. Each department should include all functions which are actually related and none which are not related to its main work. Consider, for example, such questions as these: Should playgrounds be included in the school department or combined with parks in some other department? Where does poor relief belong—in a department by itself, or along with health, or with prisons and correction? Where should we place the public library? If you desire to include all these functions within seven or eight departments, the public library cannot have a department all to itself. Where should it go? Think over carefully the proper placing of such things as the inspection of weights and measures, auditing, pensions, printing, assessments and collection of taxes, billboards, care of hydrants, censorship of amusements, charities and poor relief, child welfare, collection and disposal of ashes, excess condemnation, food and milk inspection, free employment bureaus, free legal aid, grade-crossing elimination, hospital administration, housing laws and their enforcement, licensing, limitation of building heights, management of bridges and ferries, municipal accounts, municipal-budget making, municipal concerts, municipal courts, municipal purchasing, parks and playgrounds, paving, playground administration, prevention of incendiarism, prisons, protection of life and property, public light-

ing, public recreation, public water supply, registration of voters, garbage collection and disposal, regulation of explosives, regulation of the location of buildings, sewage and sewage disposal, sinking funds, smoke prevention, snow removal, street construction, street widening, supervision of lodging houses, tree planting, vocational and industrial education, zoning.

3. Figure out, for your own city or county, the per capita expenditure for the various services (*e.g.*, police, fire protection, schools, poor relief, etc.). To do this, take the figures given in the latest annual report and divide it by the estimated population. When you have finished the figuring, make an illustration in the form of a circle divided into segments to show the entire distribution of expenditures on a per capita basis.

City government and city business. At the close of each year the municipal authorities issue a printed volume, its pages well packed with figures of all sorts. This is called the annual report. It contains a statement of revenue and expenditures, compiled by the city auditor, and a summary of what each department has done during the year, together with a great many other facts about the work of city administration. Very few people ever read these annual reports and not many would understand them if they did, but any thoughtful person who takes the trouble to run through these publications would be tempted to ask the question, "Why do they call such things government?" For they are really not government in any sense. To a large extent they are simply business. Here is an account of how streets have been paved, water distributed to the people, schools constructed, supplies purchased, contracts awarded, and labor employed—all of which would appear to be nothing but business.

But a little later in the annual report, you will find information about what has been spent upon poor relief,

public recreation, child welfare, and correction—these things are philanthropy. Hardly a word will be found from cover to cover concerning the making of ordinances, the amending of the city charter, the registration of voters, and the holding of elections—in other words the things which we commonly look upon as government or politics. All this naturally raises the question why we continue to use the term, *city government*. Why not call it *city business*, which for the most part it is? And why not handle the problem according to business methods, with an organization which is constructed on business principles?

The danger of pressing the business analogy too far. If you go to any gathering of business men you are likely to hear this last question raised, and it is a question that deserves an answer. To be sure, a large part of the city's work is not governmental in the strict sense and has little to do with making or enforcing laws. Most of the laws which now govern the people of the cities are made by the state legislatures. A very large part of the city government's work is concerned with raising money and spending it. This involves the appointment of various officials, the employment of labor, the awarding of contracts, and the keeping of a close check upon expenditures. It is work which requires honesty and experience rather than skill in politics. It is work which can never be done well if political influence and personal favoritism are allowed to intervene.

Nevertheless, the administration of a city is not merely a business problem. The business analogy, if pressed to an extreme, is sure to do harm. The city authorities must spend money in accordance with the wishes of the people. They cannot follow their own judgment in defiance of

these wishes, no matter how good their business judgment may be. A business organization does not have to consult public opinion on every detail; but municipal officers feel bound to do so. Democracy requires it. When a city government ceases to be responsive to the will of the people, it ceases to be a popular government.

A distinction that should be kept in mind. Some branches of municipal administration lend themselves very easily to the use of business methods, while others do not. The street department is a good illustration of the former class. Building streets, paving them, keeping them clean, and keeping them lighted are almost exactly of the nature of ordinary business operations. The whole problem is how to get the best results for the amount of money spent; consequently the methods used, so far as practicable, ought to be strictly business methods. But this does not hold true to the same extent in the department of poor relief or public recreation. Here also the aim is to get the best results for the money, but this cannot be done by applying the usual methods of a business concern. Any city that tries to put poor relief on a strictly business basis rather than on a humane and sympathetic basis would fail to get the best results, no matter how much money it might spend.

In short, what we call municipal administration is a combination of government (making ordinances and enforcing them); business (paving streets, building school-houses, awarding contracts, employing labor); and philanthropy (poor relief, public recreation, and social welfare). Those who conduct the city administration must take into account not only economics but political and social considerations. A successful city administration must give

the people what they want, even though this may not be what is best and cheapest. The great problem of city administration, therefore, is to make it efficient while keeping it popular.

The wide scope of municipal administration. A few years ago a pamphlet was issued showing the variety of work performed in one of our largest cities. It indicated that the city in question, Detroit, is now performing nearly two hundred different functions for the benefit of its citizens. In looking over this long list one is impressed by the steadily growing scope of municipal activities, for it includes not only the usual branches of city administration such as policing, fire protection, streets, parks, public libraries, schools, water supply, sanitation; but also such things as playgrounds, band concerts, free evening lectures, bathing beaches, neighborhood dances, educational research, and censorship of motion pictures. Every year the city is called upon to provide new services for its people—health centers, milk-distribution depots, outdoor clinics, free dispensaries, detention homes, tuberculosis camps, district nurses, mothers' pensions, free school books, and all the rest.

Law of increasing cost per capita. From this it becomes apparent why municipal government is conducted under the law of *increasing cost per capita*. In other words, the larger the city the greater is the cost per person of providing the various services which the people insist upon having. This, of course, is not the case with most business enterprises. The bigger the enterprise the less it costs to produce each unit of goods or service. In a small book-binding establishment, for example, the cost of binding will be so much per volume; but if the establishment grows

twice as large and binds twice as many books per day, the cost will be less, not more. In municipal administration the reverse is true. A small city finds that it costs so much per citizen for police and fire protection; but if the city becomes twice as large, with twice as many people in it, the cost of these things per head of population is likely to go up, not down.

Or, to put it in another way, suppose the cost of government in a city of fifty thousand people is a million dollars per year, or twenty dollars per capita; one might think at first glance that if the population were to double and become a hundred thousand, the expense of government would be two million dollars, thus keeping the per capita figure the same. That, however, is not what happens. If the population doubles, the expenses are usually a good deal more than double; sometimes triple or quadruple. The per capita cost thus becomes thirty dollars, forty dollars, or even more.

Its effect on the tax rate. Men who are candidates for municipal office sometimes promise that if they are elected they will reduce the city's tax rate and its per capita cost of government. Many voters believe them, but such promises are very rarely fulfilled. The only way in which municipal expenditures can be substantially reduced is by abandoning some of the work which the city does. The essential cost of municipal government is bound to increase as the city grows in size. As it grows in size, its life becomes more complex, its needs more diversified, its people desirous of more public services. These things mean that its administration will come to be more costly. It is futile to expect a declining tax rate in a growing city.

How municipal functions are organized and classified.

The work of city administration is divided among various departments. There may be only four or five of these departments in a small city, and as many as fifteen or twenty in a big community. Each department is headed by a commissioner or by a board. In large cities these departments are divided into bureaus, each with a director or superintendent at its head; and sometimes the bureaus are subdivided into divisions with a director or foreman in charge. The number of departments and bureaus should never be increased beyond what is necessary for the efficient conduct of the city's business. On the other hand, they should be sufficiently numerous to avoid the placing of unrelated functions in the same department or bureau. Municipal reformers often assume that the merging of two departments into one is sure to make for efficiency; but such merging accomplishes no useful end if it means that widely different functions are thereby grouped under a single head. There is no sense in putting poor relief, prisons, playgrounds, pensions, and printing in one department for the mere purpose of economizing municipal machinery.

The need for coöperation. On the other hand, one of the greatest obstacles to satisfactory work in city government is the lack of close coöperation among the various city departments. Some heads of departments are elected, some are appointed. Hence they often fail to work in complete harmony. One department is sometimes jealous of the others. Each one desires the credit when things go right and wants none of the blame when things go wrong. By looking out of his front windows, anyone can see fre-

quent examples of this failure to save the city's money by coöperation. The street department puts down a new pavement, but the surface is scarcely dry before the water department proceeds to tear it up in order to lay new mains, or the sewer department sends its men along to dig a new manhole, or the gas and electric light employees come with picks and shovels to make excavations in it. Why should not all this be done before a new pavement goes down? In some cities it is so arranged, but in most of them it is not.

City purchasing as an illustration. Or take another illustration; many of the city departments require material and supplies of the same character. Coal, for example, is needed in police stations, fire stations, schools, city hall, and all other public buildings. A large city needs thousands of tons of it every year. Why do not all the departments get together, therefore, and buy the city's entire coal supply in one large order and at wholesale prices, with a proper discount, instead of leaving each department to buy its own supplies in relatively small quantities from local dealers, as is sometimes done? The answer is that each department is jealous of its own authority and feels that it can do its purchasing to better advantage than could be done for it by any other department. In city administration there is a great deal more team play to-day than there was twenty or thirty years ago, but there is still room for more effective coöperation. Many cities, for example, have now established a central purchasing office which buys all supplies of every type and thus makes a considerable saving.

City planning. Good city administration is to some extent a result of careful planning. Yet city planning is

a relatively new thing in the United States and there has been very little of it until recent years. Planning is necessary because the mayor and other city officials serve in office for short terms and their main concern is to do whatever happens to be urgent at the time, leaving all the more difficult problems for their successors. As a result of this, much of the work becomes makeshift in character—a street is widened, a temporary schoolhouse is erected, and a few new sewers are put in, but without any comprehensive plan for street improvements, or schoolhouse construction, or scientific sewage disposal. Public buildings have often been badly located because political influence rather than public convenience has determined their location. The great congestion of traffic on the down-town streets of the large cities is in some measure due to the lack of street planning in days gone by. Most of our cities have been so busy with little problems that they have given relatively little attention to big ones. They have been anxious to grow bigger and busier, but have given very little thought to the problems which rapid growth is bound to bring. A striking exception to all this is Washington, D. C. It is the best planned city in the United States. More than a hundred and twenty-five years ago this city was fully planned before a single building was erected.

What city planning includes. City planning is the art of designing cities or parts of cities so that there may be better places for people to live in. It includes the arranging of streets, the placing of public buildings, the providing of parks and playgrounds, the devising of a transportation system (including railroads, street railways, subways, etc.), and the regulating of private property in such way as to promote the best interests of the whole people. Good city

planning, therefore, is fundamental to good city administration. Most of our cities, in realization of this, have now established city planning boards whose duty it is to consider all phases of municipal planning, including the layout of new streets, the location of public buildings, the purchasing of land for new parks and playgrounds, and the general beautification of the city. They do even more than this, for city planning is not merely a matter of widened streets and more attractive parkways. It includes the planning of the city finances, the housing laws, the zoning regulations, and a great many other things which do not show themselves in the physical aspects of the city. This, indeed, is a very important phase of city planning.

City streets. For many decades the cities and their suburbs were allowed to grow haphazard. The country highway became a village road; then it developed into the main street of a town, and finally it became the chief business thoroughfare of a large city. To have widened it in earlier days would have been cheap and easy; but when a city has grown up on both sides of it, the project becomes too expensive. That is why you find in some of our large municipalities a main business street with a width of only fifty or sixty feet, packed with vehicles from curb to curb. This is an unfortunate situation because the streets are most important factors in the daily lives of every community. They are the city's arteries. On their surface they carry traffic of every sort. This surface of the street must also afford locations for lamp posts, telephone poles, hydrants, letter boxes, street signs, police and fire alarm boxes, and a great many other instrumentalities of public service. Underneath the street surface are sewers, water mains, gas pipes, and wire conduits; while overhead are

trolley wires of a dozen other sorts, not to speak of signs, balconies, and other projections. Nearly every form of public service depends upon the streets and it is not surprising that these highways occupy almost one third of the total land area in many of our cities. That being the case, it is easy to appreciate the importance of good street planning.

The orthodox street plan. In most American cities the streets were originally laid out in rectangular form, with long, broad avenues running one way and narrower cross streets the other. This means that each street intersects the other at right angles and the city blocks become squares like those of a checker board. This plan has found general adoption in America. It takes less land for streets than any other plan would require and makes more building lots of convenient rectangular shape. This arrangement also makes it easy to find one's way about, especially when the streets are known by numbers rather than by names. The chief objection to the gridiron plan is that it makes traffic more congested at the junction of important thoroughfares. It also gives sameness to the appearance of all the streets and hampers the development of architectural beauty. European visitors often comment on this. To the stranger one street in the shopping or the residential districts looks like another; all seem to have been laid out with a pencil and ruler of the same or nearly the same width, with every lot of land nearly equal in size, and the long rows of houses seeming to be all of the same type. In the cities of Europe, on the other hand, the streets are more often curved or winding; some are very broad and some very narrow, so that each street has its own individuality. To some extent American cities are now laying

out diagonal and winding streets in their newer suburbs on the principle that picturesqueness ought to be combined with utility.

How wide ought a street to be? Until very recent years, in all American cities, and even yet in some of them, the practice has been to lay out streets in widths of forty, sixty, or eighty feet, always using multiples of ten. This is a mere rule-of-thumb method and bears no direct relation to the needs of traffic. The down-town streets of the older cities are, for the most part, too narrow; in the newer suburbs they are often a good deal wider than they need to be. "But what harm is done by having more street space than is necessary?" it may be asked. Well, every square foot of street space costs money; it has to be paved, kept in repair, cleaned, and lighted. The proper policy in laying out streets is to adapt their width to the probable needs of future traffic. This cannot always be done with mathematical accuracy, because the density of traffic changes from decade to decade, but with careful study a fairly dependable estimate can usually be made.

Traffic zones. The best practice nowadays is to fix the width of the street in terms of *traffic zones*, not merely in multiples of ten feet. A stream of traffic—motor cars, trucks, and other vehicles following one another—requires a certain sluiceway or zone to move in. This zone is ordinarily reckoned as ten feet in width. A zone of parked vehicles alongside the curb uses about eight feet. In order to allow full parking privileges and still have space for two streams of traffic to flow along easily (one in each direction), a street should be thirty-six feet in width from curb to curb. Anything less than this usually means that parking must be restricted or the thoroughfare must



Photo by Ewing Gallows, N. Y.

**AN AUTOMATIC TRAFFIC SIGNAL AT A STREET DIVISION
Near Grant's Tomb, Riverside Drive, New York City**

be made a one-way street. Anything more than this is useless unless a full zone of ten feet is added, and it is of relatively little value unless two additional zones are put on.

Traffic regulation. Owing to the great increase in the use of automobiles, the congestion in the streets of American cities has been growing steadily more acute. Some of them have found it necessary to place restrictions on parking, excluding it altogether on some streets and imposing a time limit on others. In Chicago parking has been forbidden on the down-town streets of the Loop District at all hours of the day. In order to facilitate traffic through the main streets of all the large cities, moreover, it has been necessary to frame elaborate rules which are enforced by traffic officers and by the use of automatic traffic signals. These signals are timed so as to allow, in both directions, the maximum flow of traffic consistent with safety. They are gradually replacing the large number of police officers who were formerly assigned to traffic duty.

Street pavements. Apart from good planning, adequate width, and efficient traffic regulation, the usefulness of a street depends to a considerable extent on its paving. The qualities of an ideal pavement are easy enough to specify, but not so easy to secure. To reach perfection, a street pavement should be cheap to construct, durable, easy to repair, easy to keep clean, smooth, safe for traffic, noiseless, and attractive in appearance. Unfortunately there is no type of pavement possessing all these qualities. A pavement of stone blocks will last for many years under heavy traffic, but it is expensive to build, noisy, and hard to keep clean. Asphalt and concrete pavements are cheaper, cleaner, and easier to drive upon, but slippery in wet weather and unless laid to a sufficient depth, they

break down under heavy traffic. Wood blocks have been used in many cities, and experiments are now being made with street pavements of rubber blocks. If they prove durable, they will have many advantages. For ordinary traffic a pavement of crushed stone with an oil binding is economical to construct and can be easily repaired. This form of pavement is now being widely used. But there is no *best type* of pavement for all sections of a city. It would be absurd to lay asphalt pavement in the harbor and terminal districts where the streets are filled with five-ton trucks, and just as absurd to put granite block surfacing on the streets of fine residential areas. The pavement should be adapted to neighborhood conditions.

Pavement construction methods. When the selection of a pavement has been made, it can be laid in either of two ways—by contract or by city labor. Most pavements have been built by contract. The city officials prepare the plans and call for bids; paving contractors submit their figures; and the contract is supposed to go to the one whose bid is the lowest. That, however, is not what always happens. Contracts for street paving have often been awarded on one pretext or another to contractors who were able to exert political influence. In some cities the work is done by regular employees of the street department, the city buying its own materials. This plan is usually more expensive and it is not very practicable when a city wants a great deal of work done in a hurry; on the other hand, it results as a rule in getting pavement of a better quality. Contract work, too often, is done hastily and proves defective. Direct construction by the city's own labor force is slower and more expensive, but usually more durable.

Special assessments for street improvements. When a

city needs land for a new street, or to widen an old one, it may take private property by paying just compensation. The cost is often paid by levying special assessments upon the neighboring private property which is benefited in value by the improvement. The same is true, in some cases, as regards the cost of paving or repaving a street. Sometimes it is paid from the general taxes; but more often (especially in western cities) the cost is largely or wholly defrayed by assessing so much per front foot upon all the private property which faces the street. Such assessments do not all need to be paid at once but are spread over a term of years. Special assessments are also used in many cities to cover the cost of new parks and of ornamental street lighting.

Parks and recreation grounds. In addition to streets for traffic and communication the city provides various places of recreation and play for its people. Public parks are of two types: first, the large open spaces which cover many acres and can be used by the whole city; and second, the small areas which are provided for use by a single neighborhood only. Every large city has parks of both types. The old style park which served more for ornament than for use is now out of favor. Cities are placing more stress on grounds which can be used for athletic games or for other forms of recreation. In all communities which have the advantage of being located on the ocean, on a lake, or on a river, the waterfront is a highly desirable addition to the available recreation spaces. Suitable bathing beaches, in particular, ought to be acquired by the cities for free use by the people. The development of street railway and motor transportation has lessened the

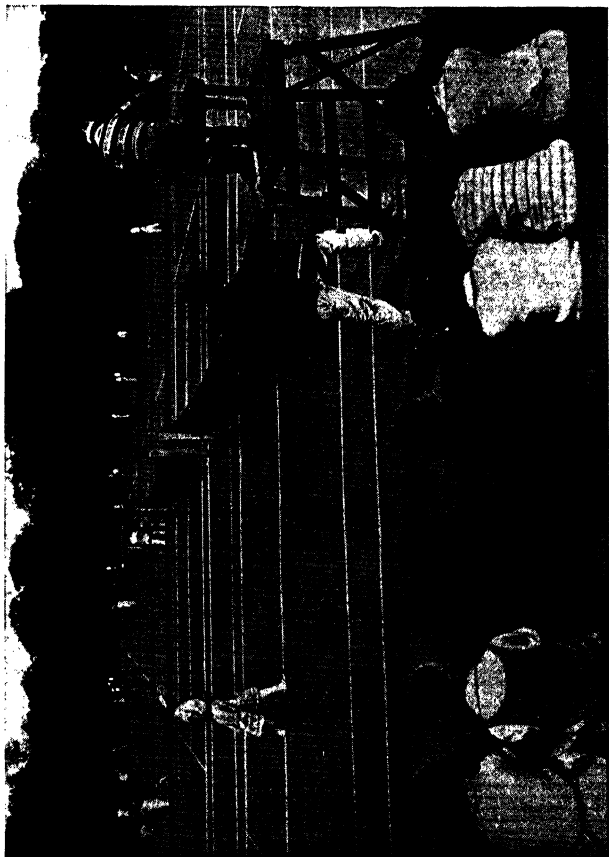


Photo from Cushing, from Ewing Gallery, N. Y.

FREE MUNICIPAL TENNIS COURTS, FOREST PARK, ST. LOUIS
St. Louis has many public playgrounds for both adults and children

pressure upon the down-town parks by making it easier for the people to get out into the country.

Public buildings. Every city must provide various public buildings. From the standpoint of suitable location, these public buildings may be divided into three classes:

First, there are those which ought to be centrally located so that they may be easily reached from every part of the community. This class includes the postoffice, the city hall, the courthouse, and the public library. In a few cities these buildings, or most of them, have been brought together in a civic center; but as a rule they are scattered here and there all over the community, wherever they may have chanced to be placed in obedience to the whims of the moment. The desirability of bringing them together, both as a matter of good planning and for the public convenience, is easy to realize.

Second, there are many public buildings which must be located in different parts of the city rather than at a single center. These include the fire engine houses, police stations, elementary schools, and branch libraries. They must necessarily be scattered, but this does not mean that planning is superfluous. Very often in the past these buildings have been located at inconvenient points because political influence rather than the public interest has determined the choice of a location. When a prominent politician has land to sell at a fancy price, the city is usually a good customer. There is no good reason why police and fire stations should not, as a rule, be housed under the same roof. There is no good reason why the school, the playground, and the branch library should not be placed upon the same plot of ground; yet rarely are these three places

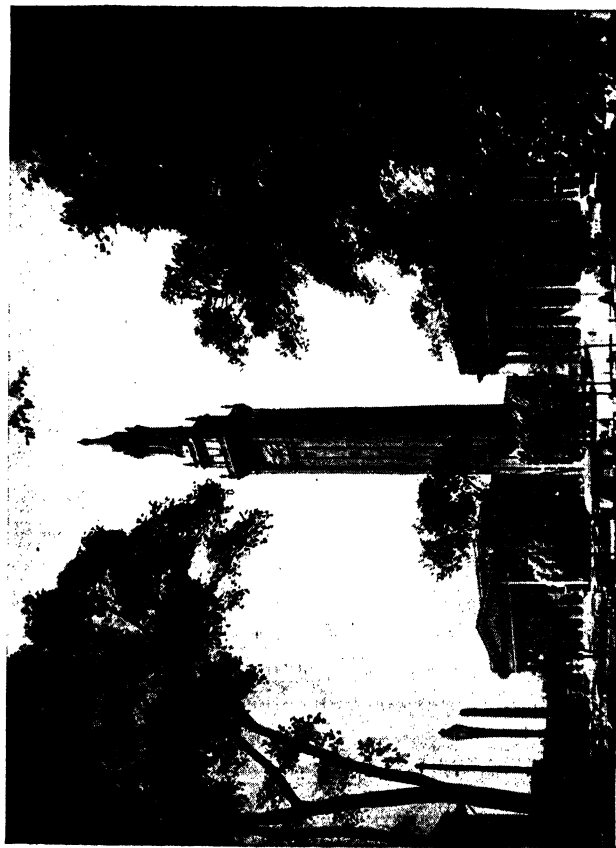


Photo by Ewing Galloway, N. Y.

THE CIVIC CENTER, SPRINGFIELD, MASS.

The campanile rises between the Courthouse and the Municipal Auditorium

of instruction and recreation within sight of one another. Haphazard location and slipshod construction have resulted in large amounts of needless expense in the case of public buildings.

Third, there are certain public buildings which have to be placed in special locations. Public baths, for example, go to the water's edge, wherever it is. The hospital should be situated outside the zone of heavy traffic and continuous noise. The city prison, the poorhouse, the garbage disposal plant, and the other waifs among public buildings—nobody wants their company. They are not welcome in any neighborhood, yet they must be placed somewhere. Timely planning would help to solve this problem by securing convenient and spacious tracts of land before the city grows so large that all the available sites are occupied, but most of our cities give no thought to such questions until the problem becomes very urgent.

Zoning and the regulation of private property. No matter what the city authorities may do in the way of planning streets properly and expending great care upon public buildings, the outward attractiveness of a community depends to a large extent upon the good taste and civic pride of its individual inhabitants. Within reasonable bounds a man can erect anything he pleases upon his own land. He may build something which is a notable adornment, or on the other hand, something which is an architectural eyesore to the whole neighborhood. Until recent years it was permissible to erect stores or factories or warehouses in residential districts whenever an owner thought it profitable to do so. This freedom was often abused. Good districts were destroyed for residence purposes by the incoming of soap factories, noisy machine

shops, or gas-making plants which filled the neighborhood with smoke and smell. To remedy this situation, most cities have adopted a plan of "zoning" by which various sections are set apart for industrial and for residential purposes. Every lot of land in the city is put into Zone A, or B, or C, or D, thus providing that it may be used for one-family dwellings only, or for apartment houses, or that it may be used for shops, or put to any use, commercial or industrial. When conditions change, it is possible to transfer any lot of land from one zone to another if the city authorities think such action desirable.

Billboard regulation. One of the worst offenders against civic beauty and good taste is the flaming billboard which stares from every vacant lot into the faces of the passers-by. For the most part billboards serve no very useful purpose. The advertising which they carry ought to be given to the newspapers, which reach a far wider circle of people and are actively engaged in promoting the best interests of the community. These billboards often mar what would otherwise be an attractive avenue or landscape.¹ The cities of continental Europe virtually prohibit them altogether. It is not possible to do that in the United States because of constitutional restrictions which protect private property; but billboards can be restricted by law and some American cities have adopted the policy of so restricting them. It is also possible to levy taxes upon them and thus to make billboard advertising less profitable.

¹The unsightliness of the billboards is not their only objectionable feature. Unless they are firmly anchored in the ground, they are often blown down by heavy winds; they afford places of concealment for footpads; and they become the nucleus of a rubbish heap. Land is rented for billboard space which otherwise would be improved and built upon. Billboard space is given over very largely to the advertising of nonessentials. If you will make a survey of say fifty billboards in your own community, you will find that by far the greater portion of the space is given to advertising luxuries. Local merchants use billboard advertising very little. Outside concerns take most of their surface.

The municipal utilities. In addition to streets, parks, and public buildings, every city maintains various other physical utilities. These include in some cases bridges, docks, markets, ferries, and so on. More important, however, are the so-called utilities—the water supply and the sewerage system. Both of these are intimately connected with the public health. Some cities own and operate their lighting plants and, in a few cases, their street railways. But light and transportation are still for the most part in private hands, although subject to regulation by the public authorities, as will be seen in the next chapter.

Public health protection. Every city has a health department. Its functions include the prevention of epidemics, the inspection of milk and perishable foodstuffs, the enforcement of sanitary regulations, the isolation of persons who have communicable diseases, and the general administration of the numerous health regulations. An illustration of the importance attached to the public health work of the city may be had by taking a single function, namely, milk inspection. Among all the foods of humanity, milk is probably the most important. It is the chief nutrition of children until they reach school age, and sometimes even longer. It forms a large factor in the diet of invalids. Even in the daily fare of robust adults, it is an item of no small importance. Yet no article of everyday commerce is more easily contaminated, and in the case of no other article are the results of pollution likely to be so serious. For when the germs of disease get into milk, they multiply with appalling rapidity and they go directly into the diet of those who have the least power to withstand infection—the children and invalids of the community.

The milk supply. From its source on the farms milk

passes through several hands before reaching the consumer, and at each of these points it may be contaminated. Careless milking, the storing of milk in unsanitary places or in unclean utensils, the lack of adequate precautions in transporting or delivering the milk—any of these things may result in pollution. Strict rules and frequent inspection help to safeguard the milk supply at the source and during its journey to the consumer, but the problem of careful inspection is rendered difficult by the fact that the milk supplies of large cities are now drawn from a wide area outside the municipal limits. New York City, for example, obtains its supply of nearly two million quarts per day from about forty-five thousand farms scattered throughout eight different states.

It is easy to appreciate the difficulties involved in the supervision of the milk supply under such conditions. Nevertheless, this supervision is being carried on in all large communities and it has resulted in a marked lowering of the infant death rate. Infant mortality and the milk supply are closely related; in fact it can fairly be said that the rate of the one depends in a large measure upon the purity of the other. The establishment of milk-distribution stations in large cities has been of considerable value in enabling the people of the crowded sections to obtain pure milk at reasonable prices.

Providing the people with a water supply. The great importance of an adequate and safe water supply is something which hardly requires a long argument. In the rural districts and in small villages the neighboring wells and springs may be utilized; but in cities, especially those having numerous industries, a public supply must be provided. It is customarily figured that large towns and

cities require approximately and on the average one hundred gallons of water per capita every day in the year. Half a ton of water per day per person! What is done with it all? Not all of it, of course, is used for human consumption. By far the greater part is utilized for public, industrial, and general sanitary purposes. Sprinkling parks and lawns, putting out fires, flushing sewers—all these activities require large amounts of water. Factories, laundries, railroads, and other such establishments make heavy demands on the total supply. So does the modern sanitary equipment which is now being installed almost everywhere in hotels, stores, and houses. The amount of water required for human consumption is very small compared with the quantities used in these other ways.

Essentials of a good water supply. The first essential of a satisfactory water supply, therefore, is that it be adequate; which means that large cities must often go a long distance in order to obtain water in sufficient quantities. New York City derives a large part of its water from the Catskill Mountains; Los Angeles brings its entire supply from the Sierra Nevadas, more than two hundred and fifty miles away. Many other cities obtain their water close at hand; Chicago, for example, draws from Lake Michigan and Cleveland from Lake Erie. Adequacy, however, is not the only consideration. For use in the industries, water must be clear in color and not too hard. When it is turbid or hard, it has to be clarified and softened by storage and the use of chemicals. The relative purity of the water, that is, its freedom from pollution, is the most important consideration of all.

How water is purified. There are various ways of making sure that water is fit for human consumption. One

way is to secure the supply from a source which is by nature free from pollution—from deep-driven wells or from mountain lakes which are above the level of probable contamination. Water supplies drawn from very large bodies of water, like the Great Lakes, are normally safe enough if the intake is set far out from shore, because the diluting power of these vast water areas is sufficient to render harmless even a considerable amount of pollution by sewage discharge. Where a water supply of sufficient natural purity cannot be had within reasonable distance, the only safe plan is to subject the water to such length of storage, or to such mechanical or chemical treatment as will ensure its fitness for use.

Storage and filtration. The storage of water in a reservoir exposed to the light and air will render it safe, under normal conditions. The length of time required for this purpose will depend, of course, upon the quality of the water which is put into the reservoir. A period of three months is ordinarily regarded as sufficient where the raw water has not been badly contaminated. The mechanical treatment of water is commonly known as filtration, and there are several forms of public water filtration plants now in use by American cities. The simplest is the system of slow sand filters in which the water is treated by allowing it to percolate slowly through a bed of sand and crushed stone, thereby becoming rid of noxious bacteria. A more complicated method involves the use of rapid sand filters in which the raw water is forced through filter beds of crushed stone under pressure.

Disposing of the city's wastes. Every city produces each day a large amount of waste which must be collected and disposed of in a sanitary manner if the interests of the

public health and convenience are to be fully served. Some of this waste contains little or no element of danger—ashes, waste paper, and rubbish of all sorts, for examples. The removal of this material is a matter of public convenience rather than of public health protection. As a rule, it is drawn away and either used for filling marsh land or incinerated. Another form of waste is garbage, which includes the discarded material from markets, bakeries, hotels, restaurants, and private dwellings. This garbage decomposes quickly and must be gathered at frequent intervals. In some communities the garbage is disposed of by incineration; in others it is sold to farmers for feeding swine; and a few cities utilize it in reduction plants where the grease and oil are extracted for commercial use.

Sewage disposal. Sewage, which includes both surface water and the liquid waste from places of human abode, is by far the most dangerous waste of all. Although it is more than ninety-nine per cent water, every ounce contains the possibility of spreading disease. This effluvium, which passes through the sewers and drains, was at one time everywhere disposed of by turning it into the ocean, lakes, or rivers. Even yet many cities of the United States get rid of their sewage in that way. The method is not objectionable in the case of ocean discharge, provided the outfall sewer is carried a sufficient distance from the shore, although even in such cases some of the sewage may be borne landward by the incoming tides to pollute the shellfish beds and the beaches. The sewage of many cities along the Great Lakes is discharged into these extensive bodies of fresh water where the amount of dilution is so great that no serious harm results, provided no water for human consumption is drawn from the immediate neigh-

borhood of the discharge point. The time will doubtless come, however, when the increasing volume of sewage will compel these cities to adopt other methods of disposal. The discharge of untreated sewage into rivers and small streams is now generally regarded as a public nuisance, and the abandonment of that practice is being required by the laws wherever practicable. Many cities, however, still resort to this method.

The newer methods. Modern scientific methods of sewage disposal have taken several different forms. A common plan is to conduct the sewage into huge reservoirs, basins, or tanks where the solids are allowed to settle and form a sludge while the liquid is run off into the ocean, or a lake, or a river. The settling process is sometimes hastened by the use of chemicals. This does not free the waterways from danger, but it is a good deal less objectionable than the practice of turning untreated sewage into them. Some cities pump the sewage upon filter beds (tracts of land which have been dug out and filled with slag or other porous substances). Others use a plan of separating the liquid from the sludge and disinfecting the former; the latter is then dried and sold as fertilizer. No one plan of sewage disposal can be regarded as the best under all circumstances. Local conditions differ from one community to another, and each case requires special study. Ordinarily a large town or city will produce nearly two hundred gallons of sewage per day for every man, woman, and child in its population. This means an enormous total in the course of a year and the problem of handling it safely without excessive expense is often a difficult one. It may well be repeated, however, that so far as the public health is concerned, sewage is the most dangerous substance known

to man and its safe disposal is one of the most important problems of the government in every civilized community.

Police protection. The practice of maintaining in cities a body of professional, uniformed policemen, who give their full time to the work of preserving law and order, is less than a hundred years old. Until well into the nineteenth century, the work of protecting life and property was performed by untrained constables and watchmen, as in England and America, or by squads of soldiers, as in most of the larger cities of continental Europe. Then the plan of using professional civilian police came into use, first in London (1839), then in New York, and later in all cities of both continents. These police officers are usually under a commissioner or superintendent. The city is divided into districts or precincts with a police station in each. The officers attached to headquarters, or to these stations, have a variety of duties to perform. They patrol the streets, enforce the laws and ordinances, protect life and property, receive complaints, make arrests, regulate traffic, and do any other work assigned to them.

Fire prevention. The prevention of fires and the protection of life and property against conflagration form another important function which the city performs for its people. The annual loss by fire in the United States is larger than that of all European countries put together. Chicago and Paris are cities of about the same size, but the yearly fire losses in the former are four or five times that of the latter. Whether New York has a larger population than London is still a disputed question, but there is no dispute about which has the larger number of fires. New York City holds the world's record in fire losses—seven or eight million dollars per annum.



Photo by Ewing Gallows, N. Y.

MODERN FIRE-FIGHTING APPARATUS

Battling a conflagration which followed an explosion of chemicals in New York City

Fire losses. In every part of the United States, the losses are enormous year after year. It has been estimated that they amount to half a million dollars per day, taking the country as a whole. If all the buildings burned in the United States during a single year were placed side by side, they would form an unbroken street from Chicago to New York. The loss of life in these fires is also great; it amounts to about three thousand per year. What are the reasons for this situation? Why is it so much worse than in other countries?

The reasons for these losses. There are two reasons for it; one of them we cannot control; the other we can. We cannot easily alter the fact that most of the buildings, whether in the cities or the rural districts of the United States, have been built of inflammable materials. Lumber has been cheap and it has been used lavishly. In Europe most buildings are of brick or stone. With the depletion of the timber supply in America and the increased price of lumber, fewer frame buildings will be constructed in the United States as time goes on. The other reason for our large fire losses is one which can be controlled. It is summed up in a single word—carelessness. To some extent this carelessness is the fault of the public authorities; to a larger extent it is the fault of private individuals.

Carelessness is the chief cause. The great majority of fires are the result of some individual's carelessness. Rubbish is left lying about near the cellar furnace; matches are placed where children can reach them; kerosene or gasoline is used to light the kitchen fire; chimneys are allowed to go unrepaired and uncleaned; ends of cigarettes are thrown on the floor or into the wastebasket—individual carelessness may take many forms.

But every fire is of the same size when it starts and a trivial accident may cause the destruction of a whole city. Fire departments are necessary and they should be kept up to the highest efficiency with well trained men and motorized apparatus; but dollar for dollar, the money spent in prevention brings far more return than expenditures for putting out fires after they occur.

The city schools. Occasionally the public schools are administered as a regular branch of the city government, but more often there is a special school district which may not coincide with the city in its area. Those voters who live in the school district elect a board of education and this board administers all the schools, with the aid of a superintendent who is either appointed by the board or elected by the people. School administration is a large and complicated subject; but it does not need to be explained in any textbook on government, because every teacher of the subject is well acquainted with it and can explain it to the class more intelligibly than can be done in a few paragraphs here. Moreover, methods of school administration differ so much in different parts of the country that no explanation of those used in one state would apply to any of the others. It is a subject on which pupils should leave their books and turn to the teacher.

Other city functions. The foregoing list of municipal functions is by no means exhaustive. There are others hardly less important—for example, the work of providing public recreation, the censorship of amusements, the inspection of buildings, the maintenance of hospitals, and the care of the poor. It would take more space than is available in this book to discuss them all. This list of functions, moreover, is steadily expanding. Compare the

city of to-day with its prototype of seventy-five or eighty years ago. In 1845, for example, Boston was a city of more than forty thousand people. It had no paved streets. There was no public water supply; the people brought enough for their daily needs from neighborhood wells. A few sewers had been built—wooden drains they were, and only in the more thickly settled portions of the city. Provision for the care of the public health was altogether lacking; there was no regular police force and only a volunteer bucket brigade to put out fires. There was no city planning, and there were almost no public buildings. Public playgrounds were unknown; so were public baths, neighborhood centers, band concerts, branch libraries, electric street lights, trolley cars, subways, and the long list of things which come within the range of municipal enterprise to-day. Those were days when almost everything was left to private enterprise. But nowadays the city has become a leader in nearly every form of social and economic activity. This socializing of urban life has gone on and still goes on without attracting much attention, but it is one of the most far-reaching developments of the past century.

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QUESTIONS ON THE TEXT

1. What is city government? City business? Can they be dealt with by the same methods? Explain.

2. Which branches of municipal administration lend themselves to business methods? Which ones do not?

3. Explain how municipal administration is a combination of government, business, and philanthropy.

4. What services does municipal administration include? What ones present the most difficult problem?

5. What is meant by the *law of increasing cost per capita* in local government? Does the same law operate in ordinary business undertakings? Why the difference?

6. How are municipal services organized and operated? What divisions are made within a department? How many departments and bureaus should a city have?

7. When should departments be merged? When not?

8. What makes for friction among municipal departments? What makes for coöperation?

9. What is city planning? What should it include? What great cities have been planned? Has a plan been made for your city?

10. According to what general layouts may the street plan be made? What are the advantages of each? The disadvantages? Take an atlas and comment upon the general street layouts of London, Paris, Vienna, New York, and Washington, D. C.

11. How wide should a street be? What is a traffic zone? What general traffic regulations should be made and how should they be enforced?

12. What points should be kept in mind in selecting paving for a street? How do the various kinds of paving compare in desirability? Is the same kind of paving suitable for all streets? How is a new pavement paid for?

13. What different types of parks should a city provide? What different types of recreation grounds?

14. What public buildings are found in every large city? Should

they be grouped into a civic center? What buildings ought not to be placed in a civic center? Why?

15. What is zoning? What restrictions should be made in a zoning ordinance? To what extent may a city regulate the use of private property?

16. What are the municipal utilities? How should they be arranged?

17. From what sources do cities get their water supply? What are the essentials of a good water supply?

18. How much water does a city use per capita per day? Why is this figure so large?

19. How may the waste of water be prevented? Should all houses be metered? If so, why?

20. How is water purified for human use? What are the advantages and defects of the various purification systems? Is a water supply that has to depend upon chemical means to purify it, a good one? Explain.

21. What wastes must the city take away? Explain the various methods of disposal.

22. What are the dangers to be guarded against in sewage disposal?

23. What police protection is provided by the city? How is a police department organized? What are its principal duties?

24. What constitutes a good system of fire protection? Is fire prevention or fire protection the more important? What are the reasons for our large annual loss of property by fire?

25. What obligations should the city assume in protecting the public health?

26. Is school administration a branch of municipal administration? How are the schools organized and administered in your community?

QUESTIONS FOR DISCUSSION

1. Draw a general plan of your city. Place in it the civic center (if there is one; if not, show where one ought to be), the principal

public buildings, the zones, the main streets, and the terminals. How could this plan be improved? Are such improvements practicable? Explain.

2. Study L'Enfant's plan of Washington or Walker's Chicago plan, noting their outstanding features.

3. "The Paris sewerage system consists of great sewers of arched masonry, horse-shoe shaped and from 15 to 25 feet in diameter. The sewage flows in a five-foot gutter at the bottom and above this gutter there is a projecting footpath about two feet wide on each side. Near the top of the tunnels are galleries that carry the city's water and conduct electric, telegraph, and telephone wires, the pneumatic postal tubes, and the pipes that carry compressed air for power. This construction involved a heavy expense at the outset, but it makes the pipes and wires accessible for repair without the necessity of tearing up the streets. For the use of the tunnels by the various pipe and wire utilities an annual mileage rental is charged. The gas mains of Paris are not carried into the sewer galleries, because of the possible danger of explosion that would thereby be involved; they are laid under the sidewalks." Do you think this a good arrangement? Why have American cities not adopted a similar plan?

4. In Buenos Aires the street car tracks are laid next to the sidewalks, thus leaving the center of the street for vehicle traffic. The passengers, in boarding a car, are thus in no danger from passing automobiles. What do you think of this scheme?

5. To relieve traffic congestion it has been suggested that we should have double-decker streets; that is, an overhead street for automobile traffic, keeping the ground level free for pedestrians. Do you think this practicable? Give your reasons.

6. What is the geographical center of your community? The center of population? The center of access, that is, the point which, by reason of traffic facilities can be most quickly and easily reached by the largest number of people?

7. Draw a large circle and divide it into segments showing the apportionment of costs for the various public services in your community.

TOPICS FOR ESSAYS

1. What City Planning Includes. 2. Regional Planning. 3. Garden Cities. 4. The Plan of Washington, D. C. 5. The Plan of New York City. 6. The Plan of Canberra, Australia. 7. Types of Street Plans in Europe and in America. 8. Street Pavements. 9. Municipal Street Lighting. 10. The Regulation of Traffic. 11. Civic Centers in American Cities. 12. City Parks and Playgrounds. 13. Zoning and Zoning Ordinances. 14. The Regulation of Billboards. 15. The Purification of Water Supply. 16. Garbage Disposal. 17. Sewage and Its Disposal. 18. Police Protection. 19. Fire Prevention Methods. 20. Public Health Protection. 21. Local School Administration. 22. How Municipal Departments Should Be Organized. 23. What We Get for Our City Taxes.

SUBJECTS FOR DEBATE

RESOLVED:

1. That city government must be responsive to the will of the people even though this responsiveness may result in the use of poor business methods.
2. That city employees, including the police, should be allowed to organize themselves into labor unions.
3. That all public work should be done by the city's own labor force and not by contractors.

CHAPTER XXVIII

CURRENT PROBLEMS OF LOCAL GOVERNMENT

1. In some of the largest cities there are thousands of registered voters who can neither read nor write. To enable them to understand the ballot, there are party symbols at the head of each column, such as an eagle, a fountain, or a five-point star. It is argued that men who cannot read or write must nevertheless pay taxes and hence should have the right to vote; otherwise we would have taxation without representation. Is this argument sound? What would you think of an intelligence test for every voter?
2. Make a list of the *natural monopolies* that are found in a large city. Should their rates and conditions of service be regulated by the state or by municipal authorities? How about a street railway that operates in several cities? Should there be an appeal to the courts from the decisions of the regulating body? When an electric lighting plant is owned and operated by the city, should its rates be regulated in the same way as those of lighting companies? Why?
3. Labor unions, as a rule, are in favor of municipal ownership. Do you think that the employees of street railways, gas plants, electric lighting plants, bus lines, and other public utilities would be better off under municipal than under private ownership? Which of the two plans do you think would be more economical? Which method is the more likely to keep the public utilities out of politics? Glasgow has made a success of municipal ownership. Does that imply similar success in an American city?

The inferior quality of local government. It is a common saying that the American people have achieved greater success in national and state government than in local administration. On the whole, this assertion seems to be

true. Higher standards of political efficiency have been maintained in the nation and in the states than in the cities and counties. There has been a better return for money expended. In general there has been relatively less corruption and dishonesty. A strange thing, is it not, that the branch of government which most intimately affects the citizen's daily life is the one to which he pays the least attention, and the one which he allows most readily to drift into the grasp of rings and bosses! A national election excites the most intense interest in all parts of the country, but local elections are often allowed to pass without attracting even a moderate amount of attention from the voters. Sometimes fewer than forty per cent of them go to the polls when mayors or county officials are to be elected.

The reasons for it. Several reasons probably account for this lack of popular interest in city and county affairs. For one thing, local government seems a commonplace matter and most people are not interested in routine affairs. Their interest is not easily aroused except by the big happenings in politics. In the second place, most voters do not realize the very great importance of honest and efficient local administration. It has not been brought home to them. They regard local government as something that is of merely minor consequence and think that if it falls down not much harm is done. Finally, a reason may be found in the fact that most local governments are too complicated. They are beyond the average voter's power to understand. He hears about boards and committees and commissions and councillors without comprehending what their relations are to one another. In order to get the voter interested in any branch of his government, you must first

make it intelligible to him. The complications of local government have enabled too much shifting of blame when things go wrong.

Where improvement must begin. In democratic government everything depends, in the last analysis, on the quality of the electorate. Many attempts to improve local government have failed because of neglect to bear this important fact in mind. All political improvement, in order to be enduring, must begin at the bottom, not at the top. It must begin in the municipalities and at the foundations of municipal government, namely, the body of men and women who control local affairs. Some one has said that every city has as good or as bad government as it deserves. In a general way that is true. The government of a city or town or county reflects the ideals and capacity of the people who inhabit it. You may change the method of electing municipal officers, or alter their powers, or make various other shifts in the mechanism of government at the top, but the results are not likely to produce any permanent advantage unless they go hand in hand with an attempt to improve the *source* of all municipal power. Local government will not be honest or efficient until the people insist on honesty and efficiency. It is quite true, of course, that no body of citizens ever consciously desired misgovernment, but they are often misled into voting for it; hence good government is first of all a matter of popular education. People who have knowledge are not easily misled.

The qualifications for voting. Should they be raised? Universal suffrage is a relatively new thing. In no country of the world has it existed very long. We cannot yet be sure that efficient local government is compatible with the

idea of giving every adult man and woman a right to vote without any educational restrictions. In some states of the Union the laws require that no one shall be permitted to register as a voter unless he is able to read and write, but in many cases this requirement is not insisted upon. Within recent years New York State has gone a step further by enacting a requirement that no new voter shall be enrolled unless he is able to present a certificate of graduation from a grammar school, or, as an alternative, can pass an intelligence test which is given by the school authorities. This test is a very elementary one, yet it has served to shut out about fifteen per cent of all those who have applied in recent years to be enrolled as voters.¹ It has been particularly effective in excluding large numbers of uneducated persons in the great cities. Might we not have a considerable improvement in the quality of the electorate if all the states of the Union would follow New York's example?

Public education and good citizenship. No matter where one may go in any part of the world, it will be found that public education and political democracy tend to keep pace with each other. In despotic governments you will rarely find a system of universal, free, public education; or if it is found, you can be reasonably sure that the despotic government will not last very long. Education is rightly regarded as the friend of democracy and the foe of despotism. Indeed it can truly be said that without a system of public education no democracy can be sure of its own permanence. This is because the maintenance of democratic government depends on the ability of the people to think straight and to see clearly. The

¹See pages 99-100.

more political freedom you give a people, the greater is their opportunity for abusing it. It is unsafe to place the ballot in the hands of people without giving them the opportunity for enough education to use it intelligently. The voter who cannot read a newspaper or understand public questions is a poor foundation on which to build any government, even the government of a small rural township.

Exceptions that prove the rule. But some one may interpose this embarrassing question: If education helps to make people better citizens, why is it that well-educated men and women are sometimes found among corrupt and selfish politicians? The answer is this: that a general truth does not cease to be a general truth because there are exceptions to it. On the contrary, the exceptions merely prove the rule. Many well-educated men are unable to earn a living, but that does not mean that education is no help toward the earning of a livelihood. Knowledge is preferable to ignorance in all branches of life. Education does not endow any one with either common sense or intelligence, but it does enable those who have such qualities to make the best use of them. The promotion of good citizenship thus depends to a very large degree upon the work of the public schools. But it should not be left to the schools alone. It is also a function of the home, the church, civic organizations, and the newspaper. Education in good citizenship is a process which never comes to an end until the citizen dies. It is never finished, or ought not to be, for no one ever attains perfection in it.

Keeping the schools out of politics. If there is any one department of local administration which should be kept free from political influence, it is the administration

of the public schools. There is a right way and a wrong way of managing the schools, but no Democratic way or Republican way. The selection of a school superintendent, the choosing of the teachers, the planning of the curriculum, and the maintenance of the school buildings—all these things ought to be done honestly and intelligently with the sole purpose of advancing the interests of education and without subservience to political pressure. Nearly everybody will agree with that proposition, and yet it is rather difficult to carry out. The members of school boards are usually elected by the people, and sometimes they must play politics in order to secure the election. Political leaders often try to get control of the school system by nominating and campaigning for their own party friends. As a result the schools are occasionally drawn into politics and their best interests are sacrificed.

How to accomplish this nonpolitical end. There are various ways of preventing this unfortunate outcome. One method is to keep the school board small in size, say five or seven members, and to have these elected by the whole school district rather than by small parts of it. Small districts usually elect small men. When a school board becomes too large, much of its work is done by committees which sit behind closed doors. A small board can do everything in the open, right in the public eye. Members of school boards should likewise be nominated in a nonpartisan way, by petition and not at party primaries. The ballots used in school elections should bear no party designations. Every candidate should be compelled to run on his own merits and his own record without relation to his party allegiance. All appointments in the school system, moreover, should be made on a merit basis; and the super-

intendent of schools should have full power to determine such matters as appointments from the eligible list, promotions among teachers in service, the use of textbooks, and the nature of the school program. One of the best ways to keep the schools out of politics is to make sure that there is no patronage for distribution among politicians.

The problems of poor relief. Poverty is one of the very oldest among human problems. Even two thousand years ago, in Biblical times, the world was trying to find a solution for this problem, and it has never ceased to try in all the centuries since that date. There are no accurate figures showing the extent of poverty in the United States, but the census of 1920 listed nearly a million persons in charitable institutions of one sort or another, and this did not include the large number of persons who are receiving poor relief in their own homes. It is probably within bounds to say that at least two million people are partly or wholly dependent on public or private aid in this country. The public aid comes largely from the local authorities. In most parts of the United States, poor relief is a county function. The county maintains a poor farm, or a house of refuge, or a hospital for the poor; or sometimes a county will have all three institutions within its boundaries. These institutions, in counties and cities alike, are supported out of public taxes. The amount necessary for this purpose is very large and is steadily growing. The expense is largest in times of business depression, when many people are out of employment.

Social insurance. The most important causes of poverty are sickness, accident, old age, and failure to obtain work. In some European countries the attempt has been made to eliminate poverty by removing these causes; that

is to say, by providing systems of compulsory insurance against sickness, accident, old age, and unemployment. The worker contributes a little, the employer contributes about as much, while the government puts in the balance. Then when the worker becomes ill, or meets with an accident, or reaches the age at which he can no longer be employed, or fails to get employment, he receives a weekly allowance. This keeps him from becoming dependent on the public poor-relief funds. It has been argued that in the United States we ought to pursue a similar plan. At present our methods of dealing with poverty are largely of a makeshift character. Numerous charitable organizations are dispensing poor relief and sometimes an impostor obtains aid from such sources. This is a wasteful system and does not go to the root of the difficulty. Would it not be better to attack the problem at its source? That is, to reach the causes of poverty rather than continue our endeavor to alleviate the distress after it has occurred.

The improvement of housing in cities. The proper housing of the people, especially in the cities and towns, has a close relation to the maintenance of health and the prevention of crime. When people are herded together in tenements, with dark and narrow hallways, with badly ventilated rooms and without sanitary conveniences, it is not surprising that we should find more than the average amount of illness, crime, and immorality. The percentage of crime is almost always highest in the crowded and poor sections of the larger cities. To cope with this housing problem, many cities have established tenement-house laws, with various provisions for the improvement of housing conditions. These regulations now provide, as a rule, that

houses which accommodate more than two families shall not occupy more than a certain amount of the land on which they are built, the remaining space being left for light and air. They also require that such houses shall not be of inflammable construction; that they shall be provided with lighted hallways and with proper sanitary equipment. It is also a usual rule that no rooms shall be used for living purposes unless they have one or more windows. Another provision of these tenement-house laws is that buildings may be condemned as unsanitary if they contain less than so many cubic feet of air space for each person living in them. This last provision is difficult to enforce except by frequent inspection; yet it is very important, for no matter how well a house is constructed, there will be danger to the public health if it is badly overcrowded. The enforcement of these housing laws is usually entrusted to a separate department of city government known as the housing department, or the tenement-house commission.

Municipal housing for workers. In some European cities many municipal tenements have been erected. Slums have been demolished and model houses, each accommodating two or more families, have been erected in their place. These tenements are then rented to workers at reasonable rates. This plan has not been tried on any large scale in the United States, although the Federal government during the World War built many hundreds of workmen's dwellings in different parts of the country, particularly in the neighborhood of the great shipbuilding plants. After the war they were sold to private buyers. New York City has also had some experience in exempting from taxation for a certain number of years small houses

built in accordance with the regulations. But in general it has been found that rigid inspection of tenements in cities is the most practicable plan of preventing bad housing. Much can also be done by promoting the growth of suburbs through the provision of good transportation facilities and by promptly supplying each suburban district with sewers, water, gas, electric lighting, and paved roads. Workmen who go to live in the suburbs not only have more room, but they are much more likely in the course of time to own their own homes. Home owning on the part of workers is a practice that ought to be encouraged from every point of view.

Regulating public utilities. In the case of most ordinary business enterprises, we can depend upon competition to secure reasonable prices and good service. If the customer finds that prices are high, or that goods are poor at one grocery store, he stops trading there and goes to another. The merchant who finds one bank unsatisfactory moves his account to another bank. The wholesale dealer, if one factory does not send his goods promptly, or charges him too much, gives his orders to some other factory. Stores, banks, and factories are thus in competition with other establishments of their own kind and in order to get business they are constantly striving to outstrip their rivals by lowering prices and improving the quality of service. It is often said that competition is the life of trade.

Natural monopolies. But there are certain lines of business in which no real competition exists and in which real competition cannot possibly exist because these lines of business are natural monopolies. Most public service enterprises, such as railroads, telephones, and lighting plants fall within this category. We call them public

utilities, but they are monopolistic in character and must always be such. Being monopolies by nature, public utilities must be subject to regulation; otherwise they would abuse their power. Regulation is to some extent provided by making provisions in the franchise under which the public utility operates. Every public utility must have a franchise; that is, a general permit to carry on its work. This permit is given by the city or the state. A street railway or telephone company, like all other public utilities, must use property which belongs to the people. It must place its tracks or lay its conduits in the city streets. This it cannot do without permission in the form of a general license which is commonly known as a franchise. Such franchises are granted for considerable terms of years and are always made subject to certain conditions as to the rates which may be charged for service and as to the maintenance of the service which must be rendered.

How they are controlled. It would not be sufficient, however, to put these various provisions in the franchises and let it go at that. There must be some method of maintaining close supervision over the public utilities in order to make sure that the provisions of the franchise will not be evaded. Hence there are, in all the states and in many of the large cities, administrative bodies known as public utility commissions whose function is to protect the interests of the customer in relation to these various concerns. Changes in rates, or in the conditions under which the service is rendered, must usually have the approval of such a commission before going into effect. The commission hears complaints from city officials or from private citizens, investigates these com-

plaints, obtains the company's side of the case, and makes such decision as the matter seems to require.

Municipal ownership. By means of public regulation, the local authorities have been able to protect, fairly well on the whole, the interests of the public in relation to these various services. Railroads, telegraph companies, electric lighting plants, and similar corporations are no longer able to do as they please. On the contrary, some of them feel that public regulation has been pressed too far. Nevertheless the complaint is sometimes made that the regulating commissions are chosen for political purposes and that their work is by no means so effective in the public interests as it ought to be. The success of public regulation has differed in various parts of the country. In some states it has been satisfactory to both sides; in others it has satisfied neither. Where it has been satisfactory, the proposal is sometimes made that these utilities ought to be taken over and operated by the city government itself. Gas companies, electric-lighting plants, and street railways, we are told, ought to be owned and operated directly by the city government, as the water supply now generally is. It is pointed out in this connection that this policy has been widely followed in the cities of various European countries, particularly in Great Britain and Germany. In the United States the policy of municipal ownership has not been nearly so popular. Among the larger cities of the United States, only five or six own and operate their gas plants; about twenty have municipal ownership of electric lighting plants, and three or four own their street railway lines.

The arguments for it. The chief arguments in favor of municipal ownership in the United States may be briefly

set forth as follows: *First*, since all public utilities are natural monopolies, they require a stricter measure of regulation than can be provided by any form of public supervision. So long as these utilities remain in private hands there will be a continual effort to evade public supervision and this effort will be successful in many cases because rich and powerful companies are exceedingly difficult to regulate under a democratic form of government. The only alternative to public regulation is public ownership. *Second*, under public ownership, it is argued, the people would obtain lower rates and better service. This would be possible because the city could procure capital more cheaply than private companies and thus make a saving in interest. Moreover, the city government would not be looking for profits, but would try to give service at actual cost. Furthermore, if the municipality owned all the public services, it could buy supplies and materials in large quantities and at lower prices.

Third, it is claimed that municipal ownership would mean better treatment of the employees, inasmuch as wages are higher, as a rule, in public than in private employment. For this reason organized labor is usually in favor of public ownership. *Finally*, it is contended that public utilities have had a detrimental influence upon American municipal politics. These companies are seekers of public privileges and in their zeal to obtain favors have been under strong temptation to work in a quiet way (sometimes even openly) for the election of public officials who would be friendly toward them. They form a part of what Mr. Elihu Root once spoke of as the invisible government. Through their paid agents and lobbyists they have tried to influence the action of city

councils in ways which were detrimental to the public interests. The abolition of all franchises and the direct ownership of these utilities would remove, it is asserted, a corrupting influence from American politics.

The arguments against it. But there is also something to be said on the other side. Municipal ownership, by reason of higher wages and less efficient management, would probably be far more expensive than private enterprise, and in the long run this increased cost would have to be paid by the people. The higher cost might take the form of higher rates for service, or it might come out of the general taxes. Probably it would be the latter, but the burden would fall upon the people in either case. When the national government operated the railroads during the war, it kept the freight and passenger rates low, but the people had to make up the difference from national taxes.

Again, municipal ownership would probably mean poor service because of political influence. We have often seen the results of such influence in the police department and in other branches of city business. There would be no incentive to give better service because the city, owning the utility, would not be subject to any form of competition or even regulation. Organized labor would likewise become a much more important influence in local politics, for municipal ownership would greatly increase the number of employees on the municipal payroll. All the street-car conductors and motormen and all the gas and electric-light employees would then be municipal officeholders. Naturally they would work for whichever political party would give them better wages, fewer hours of labor, and other advantages. The interests of the ordinary citizen would probably receive scant consideration in the face of this organized

pressure. Even to-day the city employees are an important factor in local politics. How much larger a factor would they be if their numbers were doubled or trebled?

European experience. The experience of European countries is declared not to have much relevance to conditions here. In the United States, where government is conducted on a democratic basis, with short terms of office and party influences at work, municipal ownership would not probably work out so economically and efficiently as it has done in European cities. If a government is to engage in business it should first put itself on a business basis. Still, in comparing the relative merits of public regulation and municipal ownership, it should be remembered that much depends on local conditions. It cannot be said that either policy is the better one at all times, in all communities, for all utilities, and under all circumstances. Where public regulation has been satisfactory, there is a good deal to be said for the policy of letting well enough alone. Where the policy of regulation has not been successful, the reasons for trying the experiment of municipal ownership become stronger.

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QUESTIONS ON THE TEXT

1. Why has local government failed to be as efficient as state and national governments? Why do local politics more easily come under control of political bosses? Why do voters pay so little attention to local elections?

2. How may the quality of local government be improved? How may the qualifications for voting be raised?

3. Explain how public education and good citizenship go hand in hand. What are the exceptions that prove the rule?

4. Why should the public schools be kept out of politics? How may this be accomplished?

5. What is the problem of poor relief? Is poverty a vicious circle from which there is no relief? What suggestions would you make for reducing the amount of poverty?

6. What are the arguments for a comprehensive plan of social insurance? What dangers are there in such a plan?

7. What steps can be taken to help solve the municipal housing problem? Would regional planning be of advantage? What provisions should be incorporated in tenement-house laws? Do you believe in municipal housing for workers? Why?

8. What is a public utility? To what extent and by whom should public utilities be regulated?

9. What is a franchise? What are the merits and the dangers of an indeterminate franchise? What would you suggest to secure the advantages without the dangers?

10. What is meant by municipal ownership of public utilities? What are the arguments for and against municipal ownership?

11. Has municipal ownership been a success in America? In Europe?

12. What is the most urgent problem of local government in your community to-day?

QUESTIONS FOR DISCUSSION

1. In some states the laws require that certificates of graduation from a high school or college shall not be granted except to those

who have satisfactorily completed a course in American government with special emphasis on the Constitution of the United States. Do you approve such a requirement? Does it serve any good purpose?

2. Much attention is now being given to adult education, with evening courses, university extension courses, and courses provided by various clubs and organizations. How can this work be promoted? Should such education be free and paid for out of public funds? Should the schools and colleges provide adult education by radio? Defend your answers.

3. European countries provide insurance against unemployment. When men are out of work, through no fault of their own, they receive a weekly allowance from a fund to which the employers and the government make contributions. What are the advantages and the dangers of such a system?

4. To encourage the building of homes for workers, some cities exempt such homes from taxes for a period of years. Do you believe this to be a good plan?

5. The Los Angeles city charter provides that: "Every franchise, permit, or privilege for the construction, extension, or operation of a public utility shall reserve to the city the right to purchase the property of such utility, or find a purchaser therefor, upon one year's written notice, either at an agreed price or a price to be determined in a manner to be prescribed in the grant. In fixing in any franchise the price to be paid by the city for any utility, no allowance shall be made for franchise value, good will, going concern, earning power, increased cost of reproduction, severance damage, or increased value of right of way." Do you understand these reservations and do you approve of them? Explain them.

TOPICS FOR ESSAYS

1. The Boss in Local Government. 2. Foreign-Born Leaders in Municipal Politics. 3. Racial Blocs and Municipal Politics. 4. Improving the Quality of the Electorate. 5. Public Education and Good Citizenship. 6. The Public School and Politics. 7. The Problem of Poverty. 8. Social Insurance in Europe. 9. Tenement House Laws. 10. Municipal Housing for Workers. 11. The Regulation of

Public Utilities. 12. Indeterminate Franchises. 13. Municipal Ownership of Public Utilities.

SUBJECTS FOR DEBATE

RESOLVED:

1. That environment influences human action more than heredity.
2. That the community chest offers the best practicable way of providing funds for social work.
3. That unemployment insurance should be provided in the United States without cost to the worker.
4. That private ownership under public regulation is better than public ownership in the case of natural monopolies.

CHAPTER XXIX

THE AMERICAN POLITICAL CREED

1. Certain phrases have become common in the United States, for example: "No taxation without representation"; "Government rests on the consent of the governed"; "A government is best when it governs least"; "The office should seek the man, not the man the office"; "Ours is a government of laws, not of men"; "Avoid entangling alliances"; "All men are created equal." Do you accept all these formulas as working principles of government? Defend your position on each.
2. The Constitution of the United States guarantees to every state "a republican form of government." If a state were to abolish the office of governor and give his functions to an executive committee of the legislature, would its government be unrepresentative? Why?
3. Is it possible to have a system of checks and balances in government without giving the courts power to declare laws unconstitutional? Explain.
4. James Madison once said that "the distribution of political power follows the distribution of property." Is that true to-day? Explain.

The faith of a people in their government. Every successful government rests on the faith of its people. No government stands on a solid foundation, no matter what its form or methods, unless the people have faith in it. They must believe in the general principles upon which their government rests. What are the fundamental principles upon which the system of government is based in the United States? Having seen how the government is

organized in nation, states, and local communities and having surveyed what it does in these three fields of administration, we are now in a position to review these principles, to examine their worth, and to weave them together into a creed or confession of political faith. Let us enumerate, then, the chief political principles to which the great majority of American citizens give allegiance.

1. A republican form of government. In most European republics there is a group of people, sometimes a large group, who desire to change the form of government from a republic to a monarchy. In the United States there is no such group. Virtually the whole people believe in the maintenance of a republic. The essentials of republican government are a chief executive chosen by the people, either directly or through their representatives, and an elective lawmaking body. In a republic the voters control both the principal branches of the government, executive and legislative. They control both chambers of the legislature. The Constitution of the United States not only sets up a national republic and provides for its perpetual continuance but it also guarantees a republican form of government to each of the states. It sets up and ensures a republic of republics, so long as the Constitution endures. The first article in the political creed of the American citizen, therefore, is that his government in all its branches shall be republican, representative, and responsible.

2. A written constitution as the basis of government. The national government rests on the national Constitution. State governments rest on state constitutions. City governments rest on city charters. All three branches of American government rest on organic laws. These written documents prescribe how the governments shall be organ-

ized and what powers the various departments shall exercise. Not only that, but they guarantee the citizen certain fundamental rights and afford him protection against the abuse of political power. Americans believe that written constitutions and charters are necessary as the basis of government. They are necessary to protect the rights of minorities against the oppression of majorities. Americans believe in majority rule but not in majority misrule. There are certain fundamental rights of the citizen which ought not to be infringed even by a majority vote in the legislature or at the polls. For example, private property ought not to be taken for public use without just compensation even though a majority of the people favor such action. No man should be condemned without a fair trial in open court, even though a majority in a legislative body desires to punish him. To ensure such civic rights, they are incorporated in written constitutions which cannot be easily and quickly changed.

3. Division of powers. It is also a principle of American government that all political power should not be lodged in any one place. It is divided between the nation and the states. The states have rights, and these rights must be respected by the national government. Similarly the states must leave the national government supreme within its own field. One must not interfere with the other. The great advantage of this arrangement is that it prevents any one government from becoming too strong and likewise from being too heavily burdened with work. In a country so large as the United States a national government would break down from sheer top-heaviness if all its work were concentrated at Washington or any other single place. Hence it is divided among forty-nine capitals.

To be sure, the exact division of power between the national and state governments is sometimes hard to indicate, and controversies sometimes arise concerning this line of demarcation, in which case the courts are the umpires. They decide the controversies by interpreting the words of the Constitution.

4. Checks and balances. The citizen is guarded against the abuse of political power not only by bills of rights which are incorporated in written constitutions and by a division of power between national and state governments, but also by a system of checks and balances. The executive, legislative, and judicial branches are kept separate and independent of each other, alike in national and state government, so that each may be a check on the others. The President's veto power serves as a check on Congress; the Senate's authority to confirm appointments and to ratify treaties is intended to serve as a check on the President; while the Supreme Court's right to declare laws unconstitutional operates as a check on the elective branches of government. American government, in short, is based upon the principle that individual officeholders and groups of officers are prone to abuse their powers. They stretch their authority until some limit is interposed. Hence power should be an automatic check to power. Too often, perhaps, this check is too effective, and delays the operations of government; but it is a measure of safety and most Americans believe it a wise one in spite of its defects.

5. A government of laws, not of men. Most despotisms have been created through the placing of rulers above the law. Laws are known and certain, while the will of a ruler is uncertain and subject to the vagaries of human nature. It cannot be foretold in advance. Therefore it is a pre-

caution of American government that the laws should provide for all eventualities and leave to executive discretion just as little as possible. That is what we mean by "a government of laws, not of men." Of course it is not possible to have a government of laws alone because laws are not self-enforcing. Action on the part of public officials is necessary for their just enforcement. Action on the part of judicial officers is necessary in order that the laws may be interpreted and applied. In some European countries it is the practice to enact the laws in general terms, leaving the details to be filled by executive orders. Such methods are repugnant to the American philosophy of government, because it leaves individual officers too much discretion and individual discretion means uncertainty.

6. Judicial review. In most European countries the lawmaking body is supreme. It has the last word. No court can set aside its actions. In Great Britain, for example, the will of Parliament is the supreme law of the land. There is nothing superior to an act of Parliament. No British court can declare a statute unconstitutional when once it has been enacted by Parliament and has received the royal assent. But in the United States the will of Congress is not supreme. The national Constitution is superior to all lawmaking authority whether in the nation or the states, and the Supreme Court has assumed the function of nullifying any law which contravenes it. This right of the courts to examine into the constitutionality of all laws is an outstanding principle of American government. It arises from the fact that both the nation and the states have adopted written constitutions which contain limitations upon the powers of lawmaking bodies. Obviously a written constitution would not be obeyed if

there were no authority to compel obedience and the courts are our logical agencies of legal compulsion. Constitutions without judicial power to compel their observance would be mere scraps of paper.

The objections to it. The objection is frequently raised that this principle of judicial review gives the courts too much authority. We are told that it enables a few judges, appointed for life, to set aside the will of the people as expressed by a majority in both houses of Congress. If it were true that the Supreme Court could set aside national laws at its own free discretion, this would assuredly constitute a form of judicial despotism; but no court ever nullifies a law for the mere reason that the judges consider it unwise or unnecessary. Courts do not pass upon the wisdom or necessity of laws. They declare a law invalid only when it infringes a constitutional provision which the people have themselves set up to restrain their lawmakers. What the courts do, therefore, is not to thwart the popular will, but to make it more effective. By applying the principle of judicial review, moreover, a constitution is adapted to the new needs of a growing country.

7. Equality before the law. Back in the eighteenth century, when the Constitution of the United States was framed, there were *privileged classes* in most countries of Continental Europe. In France before the Great Revolution of 1789, for example, the nobility and the clergy had all sorts of special rights and immunities. Even in England there were certain special privileges which members of the peerage enjoyed by law. The founders of the American political system took measures to prevent any such class discrimination in the United States. They decreed that

there should be no dukes, earls, or barons, and this principle of civic equality has been maintained. So far as the laws are concerned, no class or creed or section in the United States has any special privilege. It is true, of course, that people cannot be made equal in fact. They differ in physical strength, intelligence, industry, wealth, and general capacity. Neither constitutions nor laws can make all men and women equal or keep them equal in competence or resources. But a constitution can make them equally subject to the laws of the land, and can place them equally within the jurisdiction of the courts. That is what has been done. The constitutions and laws guarantee equality of opportunity so far as this can be secured by any governmental means.

8. Trial by jury. The system of trial by jury does not always operate satisfactorily. It has serious defects in practice. Nevertheless the people as a whole have not lost faith in the principle of jury trial and would strongly object to its abandonment. Rightly so, for the requirement of trial by jury is one of the most dependable safeguards against the abuse of governmental power. It gives every person the privilege of proving his innocence or establishing his civil rights before a jury of fellow citizens drawn from the neighborhood. Oppressive laws may be made by legislatures, but such laws cannot be enforced unless juries are willing to coöperate, which is another way of saying that oppressive laws cannot be enforced unless the people approve their enforcement, because juries are merely a cross section of the people and reflect the popular feeling. Lawmakers must always keep in mind the fact that no statute can be made effective by merely passing it. Enforcement is sometimes more difficult than enact-

ment, especially if juries believe that the provisions of a law are unreasonable or arbitrary. Thus the jury system helps to keep law in tune with public opinion. Trial by jury should not be abandoned or greatly restricted; on the other hand the system should be improved and protected against abuse by wrongdoers.

9. Universal suffrage and the secret ballot. The people of the United States have committed themselves to the principle that adult citizens of both sexes (with certain restrictions as to residence and literacy) shall be entitled to an equal vote at all elections. This is a relatively recent article in the political creed of the American people, but it has come to stay. There is no likelihood that the country will ever see a return to property qualifications or to manhood suffrage. Universal suffrage means that nearly half the population is eligible to be enrolled as voters, which makes the American electorate the largest single electorate in the world. The secret ballot is regarded as essential to the free expression of the popular will by this huge body of men and women. It protects the voter against wrongful pressure and enables him to mark his ballot as his conscience dictates.

10. No establishment of religion. In some European countries there is an established church, in other words a religious organization which is officially recognized to the exclusion of other religious bodies. Occasionally this established religion receives financial assistance for its churches or its schools out of the public treasury. In some cases, indeed, the higher officials of the church are appointed by the national government. This intimate connection of Church and State is believed by Americans to be undesirable. Hence a complete separation of the two has been

maintained in the United States since the Revolution. The national Constitution forbids any establishment of religion, or the passing of any law which limits the free exercise of religious belief or which sets up any religious test for the holding of public office. The principle of religious toleration is thus embedded in the supreme law of the land and must not be infringed. No church may be given special privileges which are denied to other churches, and no national taxes can be spent for sectarian purposes.

11. Local self-government. There are two methods of organizing the government of local communities. One is to make all such governments uniform in type and place them under the control of the central authorities. This is the method pursued in the French Republic. All communes (that is, villages, towns, and all cities with the exception of Paris) have the same form of government and are alike under the close supervision of the national authorities. Local government in France is organized in the form of a pyramid, with the mayors of the communes at the base and the President of the Republic at the apex. The other method is to seek no uniformity in the type of local government, but to let each state, and sometimes each county or city, provide whatever form it desires. Under this plan, moreover, each community is given a large measure of freedom in the administration of its own local affairs.

The American philosophy of local government leans strongly to this second method. It accepts the principle of local self-government or home rule as one of the essentials of democracy. For the most part American municipalities are permitted to manage their own affairs in their own way. This freedom, however, must neces-

sarily be limited by regulations which the state governments make in the general interest, for no community ~~lives~~ entirely by itself. It is in contact with other communities whose interests might be affected by a wrongful use of local freedom. Community home rule is a worthy ideal; but with the steadily closer interlocking of urban communities it has become more and more difficult to realize.

12. Economic individualism. The social order which exists to-day in most countries of the world is known as individualism, to distinguish it from communism. Under an individualistic social order most of the property in a country belongs to individuals and groups of individuals known as corporations; under a communistic organization of society all wealth belongs to the community; it is not owned by individuals but by the whole people.

The United States has accepted the principle of individualism and private property forms the basis of the American social and economic organization. The whole structure of business rests upon it. The national Constitution requires that no person shall be deprived of life, liberty, *or property* without due process of law. This sense of security, this assurance that what a man earns and saves shall be his own, not to be arbitrarily taken away from him for the benefit of others less industrious or thrifty—this guarantee has contributed enormously to the growth and economic prosperity of the Republic. Abolish private property and you would entirely change the whole character of American life.

Limitations on it. But it would be a mistake to think that private property (whether land, buildings, machinery, goods, or money) is something completely under the control of the owner to use in any way he pleases, even to the

detriment of his neighbors. There is no such thing as an absolute right of private property. The owner of property merely holds it in trust for the good of the community. His right of ownership is subject to the common interest. He must use his property in such way as the best interests of the whole people require and not in any other way. To put the matter in other words, the owner of private property merely holds it as a trustee. Hence the nation, the state, or the city may take a man's private property for public use at any time—paying him a fair compensation, of course.

The police power. Moreover, the government may forbid the use of private property in any way that is detrimental to the public safety, public health, or public morals. It may prohibit an individual, for example, from erecting on his own land with his own money a building which is too high, or is provided with inadequate safeguards against fire, or is unsanitary. It can take away private property by imposing heavy taxes on inheritances, and such taxes are now levied by both the national and the state governments. In a word the government is entitled to exercise control over all forms of private property, and this control is being steadily made more strict. Corporations, in particular, are being steadily made subject to stricter regulation as respects the use of their property. Private ownership, subject to public regulation, is regarded by most Americans as preferable to public ownership.

Remedying the abuses. No one will deny, of course, that under this system of private property there are many abuses in spite of public regulation; but representative government provides the machinery for remedying them. By its power to tax and by its police power, the govern-

ment can compel the institution of private property to serve the general well-being rather than the selfish interests of the individual owner. And when a system has faults which can be remedied, it is far better to remedy them than to take the radical step of abolishing it altogether.

A philosophy of government. The foregoing twelve articles do not form a complete list of the general principles in which the great majority of American citizens believe. There are others which will readily suggest themselves to the mind of anyone who gives the matter some thought. Together they make up a philosophy of government which, whatever its shortcomings, will compare favorably with that of any other country. Principles of government, however, should not be held rigid and unchangeable for all time. They should be modified, or even abandoned, when new circumstances require. For it should never be forgotten that government is a going concern, maintained for the benefit of the governed and not merely as an end in itself. A principle of government, or a governmental method, can only be justified so long as its existence serves the greatest good of the greatest number among the people.

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QUESTIONS ON THE TEXT

1. What is a political creed and why is it desirable that the people of a country should have one?

2. Name the indispensable features of a republican form of government.

3. What is the chief purpose of a written constitution?

4. Does the principle of division of powers serve any useful purpose? If so, what?

5. Give some illustrations of the American system of checks and balances.

6. Explain what is meant by judicial review and why it is deemed necessary in the United States.

7. Why should trial by jury be retained?

8. Compare the French and American philosophies of local government.

9. Contrast economic individualism and communism. To what limitations is private property subject?

10. What other articles in the American political creed can you name?

QUESTIONS FOR DISCUSSION

1. Individual liberty and the rights of minorities are safeguarded in England without a written constitution. Why, then, are written constitutions deemed necessary for their protection in the United States?

2. Would it be better to have fewer laws and more official discretion? Does a *government of laws* mean too many laws and lax enforcement? Explain.

3. Is it possible to have great differences in individual wealth and yet maintain the equality of all citizens before the law and the courts? Explain.

4. If no religion is established in the United States, should religious instruction be given in the schools? In what way?

5. What should be the limits of governmental interference with private ownership?

TOPICS FOR ESSAYS

1. The Political Philosophy of the Declaration. 2. The Political Theories of John Locke. 3. Montesquieu's Principle of Checks and Balances. 4. Supreme Court Decisions on What Constitutes a Republican Form of Government. 5. Socialism as a Creed. 6. The Institution of Private Property. 7. Due Process of Law. 8. Police Power and Private Rights.

SUBJECTS FOR DEBATE

RESOLVED:

1. That constitutional bills of rights have provided adequate safeguards for the liberty of the individual in the United States.

2. That private property should remain the basis of the social order.

3. That communism and democracy are incompatible.

CHAPTER XXX

THE RIGHTS AND DUTIES OF CITIZENSHIP

1. A young man came to register as a voter for the first time. The registrar of voters said to him: "Where were you born?" "I was born in France," he replied. "Both my parents were American citizens. My father was an official of the American embassy in Paris at the time I was born. Shortly thereafter he died and my mother then married a French citizen, but I came back to the United States to live with my uncle." "In that case," said the registrar, "you are not an American citizen and I cannot enroll you as a voter. You will have to get naturalized." Was the registrar right? Why?
2. Suppose an alien came to you and said: "I have been ten years in this country and I would like to get naturalized, but I don't know how to go about it." What would you tell him?
3. A well-known educator was recently denied admission to American citizenship because he refused to promise that he would serve in the armed forces of the United States whenever called upon. He said that he would do it in a just war but not in an unjust one. Do you think the court was right in refusing to make him a citizen under such circumstances?

The boast of citizenship. Two thousand years ago, when Rome dominated the world, the proudest boast that any man could make was: *Civis Romanus sum—I am a Roman citizen.* By this he meant that he owed allegiance to a world empire and was entitled to its protection, no matter where he might be. Even in barbarous regions no one could assault a Roman citizen with impunity. The long arm of the imperial government would reach out and

punish not only the offender but the whole tribe to whom he belonged. Now the United States, in the modern world, occupies much the same position that the Roman empire held in ancient times. America is the richest and strongest nation of to-day. No other nation is better able to protect her citizens, no matter where they may be. The attraction of the United States is so strong that great numbers of European and Asiatic people desire to emigrate here. It has been necessary to stem this flood by placing strict limits in the immigration laws. The privilege of admission to the United States is being sought with great energy by people all over the world, and American citizenship has become an honor and privilege that is highly prized everywhere.

Civis Americanus Sum. But every privilege carries its obligations. Those to whom the honor of American citizenship has come by birth or by naturalization should remember that it is not a matter of boast, but for humility in the light of the responsibilities involved. We are all too forgetful of the duties which the privilege of American citizenship entails—duties to the local community, the state, the nation, and the world. He is a poor citizen who regards himself as entitled to the prestige and protection of his government without his giving anything in return. To the extent that citizenship is an honor and a privilege it should be paid for in loyalty and public service. Otherwise the citizen is getting something that his conduct does not justify.

Who owe allegiance? The citizens of a country are those who owe allegiance to it. There can be no citizenship without allegiance. American citizens are those who owe allegiance to the United States. This allegiance may be

the result of birth, or it may be voluntarily created by the process of becoming naturalized. There is a popular notion that one does not become a citizen until he reaches the age of twenty-one. There is no basis for that idea. Every child becomes a citizen of some country the moment he is born. His citizenship depends on where he is born, or who his parents are, or both. He does not become a voter until he is twenty-one, it is true; but citizenship and suffrage are two entirely different matters. Citizenship begins at birth and its obligations begin just as soon as anyone is able to fulfil them.

The citizen's rights and privileges. What are the rights and privileges of an American citizen and from what source are they derived? Some of them are set forth in the national Constitution, but this document expressly declares that the list there included is not intended to be a complete one. Other rights are guaranteed by the state constitutions. Others, again, merely rest upon long-standing custom. It would be difficult to frame a complete list of all the citizen's rights. But in general the more important ones are the right to freedom of speech and of worship; to freedom of the press; to assemble peaceably; to petition for redress of grievances; to be free from wrongful arrest or search or seizure; to be given just compensation when private property is taken for public use; to have the privilege of jury trial in important cases; to be protected in life, liberty, and property by due process of law; to pass freely from state to state on legitimate business; and to carry on any honest trade without unreasonable interference. There are many other civic rights in addition to the foregoing; so many, indeed, that an attempt to catalogue them all would require a whole chapter.

There are no absolute rights. Not one of these rights, however, is an absolute right. The right to freedom of speech, for example, does not mean that every citizen is authorized by the Constitution to say what he pleases, truth or falsehood, whenever he has a mind to say it. That would not be real liberty. He has a right to reasonable freedom of speech, but his freedom must not be carried to the point where it interferes with the rights of others, or promotes disorder, or obstructs the orderly work of government. The right to freedom of the press does not give newspapers the privilege of printing libels, or unjust attacks upon individuals, nor does it protect them against prosecution when they violate the law. So, too, the right of petition does not give any crowd of malcontents the privilege of invading the White House and demanding that their grievances be redressed. All constitutional rights are to be exercised in a reasonable manner.

The distinction between rights and privileges. People often get *rights* and *privileges* confused. They speak of the one when they mean the other. Thus they talk of the citizen's right to vote, to hold office, to serve on a jury, to drive a motor car, or to practice law. These are not rights; they are privileges. They are conferred upon individuals by law and may be taken away. A citizen is entitled to vote if he satisfies the legal requirements—as to age, residence, ability to read and write, or whatever other regulations are laid down. He gains something by fulfilling these requirements; something that he would not otherwise have. So with the right to hold office. It is merely a privilege which he may exercise if he is elected or appointed. A man may be eligible to be mayor; but he has no right to that office unless the voters choose him.

The difference between rights and privileges is simply this: A right is something guaranteed to the citizen for his own benefit and protection; something that cannot be taken away from him by legislatures or courts. A privilege, on the other hand, is conferred upon him for the general benefit and may be taken away when it ceases to fulfil its purpose. The right to trial by jury is a right; but to serve on a jury is a privilege. The difference is important and not a mere play upon words.

The privilege and duty of voting. Voting is a privilege and a duty. The privilege of voting involves the duty to vote on election day. It involves even more than that; namely, the duty to become informed on the issues and to vote intelligently. A citizen renders no real service to the cause of good government if he votes for the mere sake of voting—without a knowledge of who the candidates are, what they stand for, and what issues are at stake. People do not become good citizens by going to the polls. They go to the polls because they are good citizens. The privilege of voting is accorded to the people on the understanding that they will make use of it gladly and intelligently.

The civic slackers. Many citizens, of course, do not live up to this obligation. At every election there are many who stay away from the polls, because they are not interested or are too busy to vote, or forget about it. It has become necessary to ring the bells on election morning to remind voters of their duty, and often great efforts must be made during the day in order to get out the vote. This tendency to stay at home from the polls is especially prevalent in the cities. Our methods of government are in part to blame for it. Too many elections are held. The voters in some cities are called to

the polls four or five times a year—for national or state primaries and elections, for local primaries and elections, for school board elections, and for special elections on bond issues. They would take more interest if elections did not come so often. Ballots should be shortened and voters should not be asked to choose minor officials. The issues should be made clearer so that people will develop a real interest in them. If all this were done, we should probably have a better attendance at the polls.

Other duties of the citizen. The duty to vote intelligently is not the only obligation of the citizen, although it is the one most frequently mentioned in popular discussion. To be a good citizen involves, first of all, a desire to know the truth about public affairs. The truth can only be known by a study of the facts. Too many people, however, do not care to find the facts for themselves. It is too much trouble. They prefer to be guided by their own prejudices, or by what someone tells them, or by what they read in some partisan newspaper. The facts about candidates and issues and governmental policy are not always easy to find. The task of finding them requires study here as in everything else. To get at the truth one must read both sides of the case and listen to what both sides have to say. The citizen should not make up his mind in advance of doing this. When his mind is made up, however, he should express his opinion, clearly and firmly. Public opinion is made up of individual opinions and every intelligent citizen should take his share in moulding public opinion. Otherwise the making of public opinion will fall into the hands of the few, and it will not represent the mind of the people as a whole.

Civic duties in general. Many other duties of citizen-

ship are implied in the very nature of democracy if it is to be truly a system of government by the people. All good things involve personal sacrifice on somebody's part. The maintenance of political liberty involves a personal sacrifice on the part of every citizen. The good citizen must do, as a matter of duty, what may seem irksome—go to the primaries and to the elections, belong to civic organizations, pay his taxes promptly, obey the traffic regulations, and give due respect to other people's opinions. In short, the duties of a good citizen are too numerous to be included in a single paragraph of any book. But here are some of the most important:

He should learn his country's history and be proud of it; understand his government and honor it; have honest opinions of his own and respect those of others; bear his portion of the common burdens cheerfully; be loyal in action, word, and thought; and ready to serve, if need be, in the nation's cause—these are the first attributes of good citizenship in a democracy.

Training for citizenship in the schools. Training for citizenship begins in the home and in the schools. The purpose of the school is not merely to impart information. That is a small part of its work. Its main function is to afford the sort of mental and moral training that will enable every pupil to achieve the durable satisfactions of life—to make a good living, to be of high service to others, and to leave the world a little better by reason of his having lived in it. Many of the best fruits of education are not found listed on the school program. Orderliness is one of them. Industry is another. Responsibility for doing daily tasks well is a third. There are no special courses in these things. They are part and parcel of the whole process of

education. No one should make the mistake of supposing that the schools train for citizenship through instruction in American history, civics, and economics alone. The whole organization of the school, its entire program of studies, its assemblies, its discipline, its insistence on punctuality, its organized athletics, and other activities—all these things afford lessons in coöperation, responsibility, service, and government.

A junior republic. The public school is a miniature democracy. It is free and open to all. Its pupils have equal privileges and equal responsibilities. It makes no distinction of race, creed, or wealth. The children of rich and poor parents sit side by side and are given the same opportunities. Every pupil who enrolls in a public school gets the same start and his advancement depends upon his own efforts. In the course of time some will lead and others fall behind, just as men and women do in the outside world. Wherever individuals, young or old, are gathered together, some will forge ahead of the rest by virtue of their natural ability, their superior industry, or other qualities of leadership. School experience should impress this great fact of democratic life upon every pupil's mind. The pupil who imagines that he can be regularly behind in his studies, neglectful of his opportunities, unable to command the respect of his teachers or his fellows in the school, and yet hope to become a leader in the outside world is making a grave mistake. It is not thus that the leaders of men are trained. The useful citizen does not become so in a day or a year. He begins to develop his qualities while he is young.

Training for citizenship on the playground. Recreation and play, when properly carried on, afford not only exer-

cise and amusement, but education as well. Some useful lessons which cannot well be taught in the classroom are learned by participation in organized athletics. Every one realizes, for example, that play in which there is no leadership, no observance of rules, and no system is a very poor sort of play. It may give physical exercise in plenty, yet it satisfies nobody. Anarchy on the playground is no more satisfying than anarchy in any other branch of human activity. Hence, whenever a group of young men or young women go to the athletic field, their first step is to organize into teams or sides. Each team has its captain whose directions are to be obeyed, not because he is an autocrat, but because the team cannot hope to win unless it is provided with leadership. When play begins it is conducted according to rules which every one is supposed to know and observe. If the contest is important, an umpire is selected to act as arbitrator on questions involving an infraction of the rules. Now all this is merely government on a small scale. The element of leadership, the team play, the rules, the practice of obeying the umpire—these things should suggest to us that officials, laws, government, and courts also make for the best interests of the individual in the great interplay of life.

Fair spirit as the basis of good citizenship. What is it that secures coöperation, obedience, and good temper on the playground? Is it the fear of punishment? No! It is the same force which in organized society secures obedience to law and respect for the rights of others—namely, the influence of public opinion. Public opinion, in other words an inherent sense of fair play among the players, is what really rules the playground. Bullying or meanness in any form results in unpopularity. The player who sulks, who

shirks his part in the game, or who selfishly seeks his own way at all times is not preparing himself rightly to win the confidence and respect of his fellow citizens in later life. On the other hand the boy or girl who gains on the playground a reputation for fairness, good temper, and a readiness to act in harmony with others is developing those qualities of character which enable men and women to achieve success in any field of adult activity. The Duke of Wellington once declared that the battle of Waterloo was won on the playing fields of Eton—a famous boys' school in England. What he meant was that this victory was won not by military skill alone, but by those qualities of discipline and bulldog tenacity which the officers of his army had developed on the school athletic fields in their boyhood days. Peace hath her victories not less renowned than war. Good citizens as well as good soldiers can be trained on the playgrounds of every community.

Training for citizenship in college. Civic education is not completed when one graduates from school. A man's whole life is a process of education, a process that is never finished until he dies. So the work of self-improvement should not be interrupted at any stage. If the pupil goes to college, it will be found that there the same qualities of obedience, industry, and respect for the rights of others will determine whether he stands high or low in the estimation of his equals. In the college as in the school, every one starts upon the same plane with equal opportunities. The college also is an organization with officials in authority, with rules, and with a vigilant public opinion among its students. Compared with the school it rises a step nearer to the ways of the world, giving its students greater latitude, but also placing more responsibility upon them. Its

organized athletics develop the same qualities as are encouraged upon the school playground; its various other student activities help to make young men and women more versatile and broader in their interests. Colleges try to make scholars; they also endeavor to develop habits of industry in their students and to impress upon them the duty of service to their fellow men. On the whole the colleges have succeeded in these things. It is significant that the great majority of the nation's leaders, in every branch of life, are men and women who have had a college education.

Earning and learning. Not all high school graduates, however, go to college. The majority go directly out into the world as wage earners or home makers. They enter the ranks of our great economic society and seek to move onward to the top. For the most part all must begin at the bottom, or very near it. A high school or college education does not relieve anyone from the necessity of starting on a low rung of the ladder in his chosen trade or profession. The art of earning a living must be learned by direct contact with the affairs of the world. Political wisdom, in the best sense, must also be acquired in that way. It comes from contact with people, not with books. One of the most fruitful educational enterprises ever known is undertaken every four years in connection with a presidential campaign. For several months more than forty million voters (besides millions of others who are too young to vote) are engaged in reading and hearing about all the great issues of government.

Citizenship and service. To make one's own way successfully in the world is a laudable ambition, but no one can be and remain a good citizen if he devotes his entire

time and thought to his own self-advancement. It is well to be diligent in business and faithful to the immediate duty in hand, but no inspiring career has ever been built upon foundations of selfishness. If every one is engrossed in his own affairs, there will be none to serve and aid the state. On the other hand, a very small amount of public service freely and cheerfully given by every citizen results in great benefits to the community which receives this service, and to the individuals who give it as well. In this sense, as in all others, it is more blessed to give than to receive. In the older days, when government was carried on by a small oligarchy or governing class, the plain citizen could and did abstain from any part of it. But now, under a democratic system, the burden and duty of helping to govern the country rest upon everybody. Popular government cannot endure or succeed except on the basis of a willing participation by all the people.

The ways of service. The ways of service are manifold. Every community has its civic and welfare organizations whose aim is the general good. They draw their members and their active workers from among those citizens who are public-spirited. Boards of trade and chambers of commerce devote themselves to advancing the economic interests of the community. Municipal improvement leagues, citizens' associations, men's clubs, and women's societies are to be found in every large town or city; they have various aims but all are guided by the same general aspiration, which is to better the environment in which the people live. The opportunities for women have been greatly increased by giving them the same responsibilities as men in all public activities. There are organizations for the care of the poor, for visiting the sick, and for the pre-

vention of cruelty in all its forms. All depend for the effectiveness of their work, and even for their very existence, upon the degree of interest given to them by public-spirited citizens. There is no one so poor or so busy that he can give no money, no time, and no sympathy to any public cause. The citizen who centers all his interest upon his own personal affairs is not only missing one of the durable satisfactions of life but is giving himself a schooling in selfishness. He is not a good citizen in the proper sense of the term.

When the opportunity comes. Service in public office is the best training for good citizenship, although not all men and women can have this form of civic education. Yet every one has a right to aspire to it, and ought to welcome the opportunity of such service if it comes. It does not usually come unearned. Like most other opportunities, this one knocks at the doors of those who have earned their right to it. Men and women who have displayed no evidence of public spirit are rarely called upon to let their names go on the ballot. The first step to honorable public office is taken when one joins a civic or welfare organization and shows ability to work with and for others. Thus a man's acquaintance, or a woman's acquaintance, gradually broadens; the confidence of others is gained; and in time the hand of the public beckons to those who have demonstrated their worthiness to serve.

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QUESTIONS ON THE TEXT

1. Why is America so attractive to foreign emigrants? Are the reasons political, social, or economic?

2. What are the implications of the saying *Civis Americanus sum*?

3. When does citizenship begin?

4. American citizens have certain *constitutional* rights. What are they? Are these rights absolute?

5. Distinguish between the rights, privileges, and obligations of citizenship.

6. Why is voting a civic duty? How can we secure a more general performance of this duty?

7. Where and how can training for good citizenship be had?

8. To be a good citizen one must have a sense of responsibility, fair play, and obedience. Show why this is so.

9. What are the usual ways in which one can be of service to one's country?

10. Do you look upon officeholding as a duty you would perform at personal sacrifice, if need be? Explain.

QUESTIONS FOR DISCUSSION

1. "Good citizenship can be learned, but it cannot be taught." Explain this statement and give your opinion as to whether it is true.

2. Only three countries—England, the United States, and Switzerland—have maintained democratic government for a hundred years or more. These three countries, as it happens, are the ones most devoted to outdoor competitive athletics. Their people, it is said

have learned to be *good losers* and hence good democrats. What do you think of this contention?

3. There is a saying that "the office ought to seek the man, not the man the office." Do you believe that a citizen who thinks himself qualified to fill an office ought to seek it frankly and not make a show of reluctance? Would our politics not be more sincere if every one did this? If so, in what way?

TOPICS FOR ESSAYS

1. The Roman Citizen and His Rights. 2. The Liberties of Englishmen (as Blackstone enumerated them). 3. The Natural Rights of Man. 4. The Constitutional Rights of an American Citizen. 5. The Major Obligations of Citizenship. 6. How the Duty of Voting Can Be Impressed on the People. 7. Agencies for the Improvement of the Electorate. 8. Education and Good Citizenship. 9. Athletics and Civic Spirit. 10. The Ways of Public Service.

SUBJECTS FOR DEBATE

RESOLVED:

1. That the acceptance of public office should be made compulsory in the United States as it is in Germany.

2. That a long period of great economic prosperity is a menace to free government.

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CONSTITUTION OF THE UNITED STATES OF AMERICA

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes¹ shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.² The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

¹See Amendment XVI.

²Partly superseded by Amendment XIV.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

~~The~~ The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.¹

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

¹See Amendment XVII.

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The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, Punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections, to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to

reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax, shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.¹

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of

¹See Amendment XVI.

the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State, shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

¹The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives,

¹This paragraph was in force only from 1788 to 1803.

open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.²

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be Increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect, and defend the Constitution of the United States.”

²Superseded by Amendment XII.

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,

and treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State¹;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation

¹See Amendment XI.

therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers,

both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

AMENDMENTS¹

I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

II

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

¹The first ten Amendments were adopted in 1791.

VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

X

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

XI¹

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

XII²

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the

¹Adopted in 1798.

²Adopted in 1804.

number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

• XIII¹

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

XIV²

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States:

¹Adopted in 1865.

²Adopted in 1868.

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

XV¹

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

¹Adopted in 1870.

XVI¹

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

XVII²

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of each State shall issue writs of election to fill such vacancies: PROVIDED that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

XVIII³

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes, is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided by the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

XIX⁴

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

¹Passed in July, 1909; proclaimed February 25, 1913.

²Passed May, 1912, in lieu of paragraph one, Section 3, Article I, of the Constitution and so much of paragraph two of the same Section as relates to the filling of vacancies; proclaimed May 31, 1913.

³Passed both houses of Congress, December, 1917; ratified by the required number of states January 16, 1919, and proclaimed to take effect January 16, 1920.

⁴Passed the House of Representatives May 21, 1919; passed the Senate June 4, 1919, proclaimed August 26, 1920.

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